

Opinion in relation to the consultation of a public company on the scope of the right of access to audio recordings corresponding to calls made to an emergency telephone

A letter from the Data Protection Officer of a public company is submitted to the Catalan Data Protection Authority, in which he requests the opinion of this Authority on the scope of the right of access to audio recordings corresponding to calls made to an emergency telephone.

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The consulting entity, in its capacity as Data Protection Delegate of several entities in the field of health, among them, (...), requests the opinion of this Authority on the scope of the right to 'access to audio recordings corresponding to calls made to an emergency phone, the telephone and online service that citizens can use whenever you have a doubt, query or health problem.

The entity points out in its letter that, when the call is made and in order to guarantee the correct provision of the service, it proceeds to the recording of:

- The citizen's first contact with an operator, in which he explains his emergency: who it is, what it asks for, where it is, etc.
- If applicable, the conversation that this citizen has with the person (doctor/nurse) to whom the operator has referred them to treat their emergency.
- If applicable, the conversations held between the operator, the doctor or other professionals of the (...), in which they decide the action to be carried out, without the participation of the citizen.

In view of this, it raises specifically whether, in the event of an interested party's right of access in which he expressly requests the right to copy Article 15.3 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, Data Protection General (hereinafter, RGPD):

1. The right of access could be considered accepted by making the recordings available to the interested party in the corporate center of (...), without the possibility of copying.
2. The (...) has the obligation to provide a copy of the recordings to the interested party containing the voice of its professionals and, therefore, they have the obligation to consent/allow this delivery. It points out the possible consideration of the voice as biometric data.

3. It can be understood that part of this right of access is the conversations held between the professionals, without the intervention of the interested party, during the management of the incident reported and, therefore, a copy should be provided to the also interested in these conversations.

III

The assumption raised by the Foundation refers to the scope of the right of access that Article 15 of the RGPD recognizes to interested parties regarding audio recordings corresponding to calls made to an emergency telephone.

According to the information available, the (...), through this telephone, "offers non-face-to-face health care, solves health problems and carries out administrative procedures; promotes health, prevention and cure of disease; and activate Medical Emergencies if necessary".

From the services described, it follows, for the purposes of interest, the processing of personal information (Article 4.1 RGPD) both of the person who makes the call and of the professionals who attend to him (operator, doctor, nurse, etc.), until everything, especially in the case of calls linked to emergency situations, from other people affected by this emergency whether or not linked to the person making the call.

This personal information would include the data relating to the voice of the interlocutors and also other personal data that can be derived from the content of the conversation held by these people, which could include data deserving of special protection (Article 9 RGPD) of the person who makes the call or from a third party, among others.

Article 15 of the RGPD regulates the right of the interested party to access their personal information held by third parties in the following terms:

"1. The interested party will have the right to obtain from the person in charge of the treatment confirmation of whether or not personal data that concern them are being processed and, in such case, the right to access the personal data and the following information: a) the purposes of the treatment; b) the categories of personal data in question; c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations; d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period; e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment; f) the right to present a claim before a control authority; g) when the personal data has not been obtained from the interested party, any available information about its origin; h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

2. (...)

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the

interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others.”

This provision of the RGPD recognizes the right of the affected or interested person to have the data controller confirm whether or not their personal data is being processed and, if so, to access it and obtain a copy of it, as well as information on the aspects mentioned in its section 1 (purpose of treatment, categories of processed data, recipients or categories of recipients to whom the data has been communicated or is expected to be communicated).

Given this, agreeing, in view of the first question raised, that, in the event that the interested party expressly requests the obtaining of a copy of his data, it would not be sufficient, for the purposes of considering that has made effective his right of access, facilitate only access to his personal data, in the proposed case, in the corporate center of (...).

IV

Having made these considerations, and with regard to the rest of the issues raised, it must be borne in mind that, in the context in which we find ourselves, this right of access of the interested party to his information held by the person in charge could be exercised, d entry, by the person making the call to an emergency telephone.

If this is the case, the (...) should confirm the processing of your personal data for the purposes of managing the incident reported, provide you with the information in Article 15.1 of the RGPD, as well as access and copy of said data.

This access should refer to all that information relating to your person that has treated the (...), whether it is your voice or other personal data that can be derived from the content of your call or, where appropriate, from the conversation that the professionals of the (...) can have when deciding on the actions to be carried out. And this regardless of the support in which this data is contained.

Given this, a priori it could be said that this person, as an interested party, would have the right to access the recordings linked to their call made to an emergency telephone and to obtain a copy thereof (article 15.3 RGPD).

However, it should be borne in mind that article 15.4 of the RGPD provides that "the right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others".

As we have seen, these recordings may contain, in addition to your personal data, information relating to third parties.

In its consultation, the entity emphasizes the fact that it includes the voice of the professionals who attend to the interested party (operator, doctor, nurse, etc.), as well as the possible configuration of this personal data as biometric data

According to article 4.14) of the RGPD, biometric data are "personal data obtained from a specific technical treatment, relating to the physical, physiological or behavioral characteristics of a natural person that allow or confirm the unique identification of said person, such as facial images or fingerprint data".

For its part, recital 51 of the RGPD provides that "(...) the treatment of photographs should not be systematically considered treatment of special categories of personal data, because they are only included in the definition of biometric data when they are treated with specific technical means that allow the univocal identification or authentication of a natural person. (...)".

From the joint reading of these forecasts, it seems to be possible to understand, for the purposes they are concerned, that the treatment carried out through the recordings of the calls made to an emergency telephone, in which the voice of the people is captured interlocutors, the treatment of biometric data should not be systematically considered, on the understanding that this data would not be treated with specific technical means in order to uniquely identify or authenticate the natural persons interlocutors, the assumption to which it refers the GDPR (for example, voice recognition systems). Therefore, the voice, in a case like the one being examined, would be considered merely identifying data.

Having made this clarification, for the purposes of determining the extent of the right of access of this interested party (the person making the call), it is necessary to bear in mind the different recordings carried out by (...).

Thus, in relation to the recording of the conversation he maintains with the professionals attending to him to resolve the incident that motivates his call to an emergency telephone (operator, doctor, nurse, etc.), without other people are involved, it can be said that the person making the call would have the right to access it and obtain a copy of it (article 15.3 RGPD), by containing information relating to their person (the voice and other data that of the content of their conversation).

The fact that this recording contains the voice of professionals from (...) should not be considered an obstacle to its delivery to the interested party, taking into account the right of any person to know the identity of the person who has served him (article 53.1.b) Law 39/2015, of October 1, on the common administrative procedure of public administrations), in this case, of his interlocutor and the consideration of the voice, in the present case, as identifying data.

As for the other type of recording carried out by the (...) when receiving a call to an emergency telephone, this is the one relating to the conversation held by the different professionals of the (...) in which they decide the actions to be carried out without the participation of the person making the call (his voice is therefore not recorded), the access of the interested party should be carried out without that contained personal data of third parties. This could be done by means of a transcription of the content of the conversation or, if necessary, a copy of the recording of the conversation after distortion of the voice of the professionals concerned.

v

On the other hand, the right of access in Article 15 of the RGPD could also be exercised by the person to whom the emergency communicated by the person who makes the call to an emergency telephone, to whom for expository purposes we will refer to as "the patient".

If so, the (...) should confirm to the patient the treatment of his personal data as a result of the call received in relation to his person to an emergency telephone, provide him with the information of the article 15.1 of the RGPD, as well as the access and copy of said data, regardless of the support in which they are contained.

Taking into account the different recordings carried out by the (...) and the information they contain, to which we have referred before, the patient's right should be recognized, as

interested, to access and obtain a copy of the recording relating to the conversation held between the person who makes the call to an emergency telephone and the professional who attends to him, containing information relating to his person (that which comes off of the content of the conversation).

As we have seen, the fact that this recording contains the voice of the professional should not be considered an obstacle to its delivery, in this case, to the patient, given the right of any person to know the identity of the person who attended to him. A situation that would also occur in this case despite the fact that care for the patient has been conveyed through a third party (who makes the call).

Nor would it be an obstacle to the delivery of this recording that the voice of the person making the call to an emergency telephone is included. Article 15.1.g) of the RGPD provides that when the personal data have not been obtained from the interested party (the patient), the person in charge must provide him with any information he has about the origin of this data. In a case like the one examined, this would involve having to provide the patient with the information they have about the person who provided them with information about their person, that is, about the interlocutor (specifically, the voice).

With regard to the recording relating to the conversation held by the different professionals of the (...) in which they decide the actions to be carried out, the patient's access should not include data from third parties, for which, as in the previous case, could be given a transcript of the content of the conversation or, if necessary, a copy of the recording of the conversation prior to distortion of the voice of the professionals concerned.

VI

Having examined the scope of the right of access that Article 15 of the RGPD recognizes to the persons concerned with regard to the audio recordings corresponding to calls made to an emergency telephone, it is considered pertinent to also make the possibility that these people can obtain access and copy of these recordings by another means.

Article 5.1.a) of the RGPD establishes that all processing of personal data (article 4.2)), such as the delivery of a copy of the recordings corresponding to a call made to an emergency telephone, must be lawful, being, for this purpose, the concurrence of one of the legal bases of article 6.1 of the RGPD.

Considering the context in which we find ourselves, this legal basis could be:

- The consent of the affected person (Article 6.1.a) RGPD), in this case, of the professionals of the SEM;
- Compliance with a legal obligation applicable to the data controller (Article 6.1.c) RGPD), in this case, compliance with Law 19/2014, of December 29, on transparency, access to public information and good government;
- Or the satisfaction of a legitimate interest pursued by a third party (the interested party), as long as the interests or fundamental rights and freedoms of the affected party (the professionals) do not prevail, which require the protection of personal data (article 6.1.f) RGPD).

The analysis of the concurrence of any of these legal bases is not part of this opinion as it is not the subject of consultation by the Foundation.

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

The attention of the interested party's right of access means that the person in charge must provide him with access to his personal data and, when he requests it, a copy of this data.

Both the 911 caller and the patient have the right to obtain a copy of the recording of the conversation between the caller and the healthcare professionals.

With regard to the recording of the conversation held by the professionals of (...) for the purposes of deciding the actions to be carried out, the interested parties could be provided with the transcription of this conversation or, if necessary, copy of the recording prior to distortion of the voice of the affected professionals.

Barcelona, December 11, 2019

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