

Ref. IAI 41/2019

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim presented by a citizen against the Foundation of a Hospital for the denial of access to information about the emergency service

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on claim 295/2019 presented by a citizen against the Foundation of a Hospital (hereinafter, the Foundation) for the denial of access to information about the Hospital's emergency service.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and having seen the report of the Legal Counsel, the following report is issued.

Background

1. According to the file, on March 15, 2019, the claimant requested various information from the Hospital, specifically:

- "1. Position, director or manager, who makes operational decisions, day to day, in relation to the Hospital's emergencies.
- 2. Number of those responsible.
- 3. List of insurance clients and/or any other third party liable for payment (not individuals), to whom invoices have been issued by (the company...), corresponding to the provision of health care by the Foundation (...), and all broken down over the years.
- 4. Relationship of Spanish or foreign insurers, and/or third parties obligated to pay, which have contracts signed (and/or have had from 2009 to 2018) with (the company...), as set out in point III of the supposedly valid contract between (the Foundation and the company...).
- 5. Data from the Point of Sale Terminal (POS), used by (the company...) during the process of managing foreign invoicing."

2. On May 9, 2019, the interested person lodged a complaint with the GAIP alleging that the Foundation had only partially provided him with the requested information. The person making the claim attaches to the claim a letter of objections to the Foundation's resolution of April 15, 2019 (which the Foundation would have addressed to the claimant in response to its request for information of April 15, 2019 March).

3. On May 20, 2019, the GAIP requested the claimant to rectify the claim. It is stated in the file that, on May 21, the claimant provided the GAIP with various complementary information to the claim, among others, a copy of the request for information made by the claimant at the Hospital, in date March 15, 2019.

4. On May 30, 2019, the GAIP requested a report from the Foundation in relation to the claim presented. It is in the file a copy of the Foundation's Report, dated June 13, 2019, according to which it considers that the relevant information would have already been given in relation to the identity of positions, managers and/or directors of the Foundation . He adds that it is not appropriate to provide other information (points 3, 4 and 5), and refers to several reports of the Foundation issued following previous claims, and the corresponding Resolutions of the GAIP, issued following these claims (GAIP Resolutions no. 356 /2017, 48/2018, and 314/2018).

5. On June 20, 2019, the GAIP transfers the claim submitted to the affected third party (the company), to give it the opportunity to make allegations. The GAIP communicates the completion of this procedure to the Foundation. It is not known, at the time of issuing this report, that this affected third party has submitted allegations.

6. On July 1, 2019, the GAIP informs the Foundation of the need to transfer the claim presented to the managers and managers affected by the claim.

7. On July 2, 2019, the GAIP requests this Authority to issue a report in relation to the claim submitted, and informs the person making the claim.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must request a report from the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected. Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29 , of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

II

According to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), personal data is: "all information about a identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person; (art. 4.1 RGPD).

It is also necessary to take into account Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

Therefore, the processing of personal data (art. 4.2 RGPD) that may be contained in the information requested in relation to various positions and managers of the Hospital, as well as, where appropriate, in the information relating to third parties obliged to pay , or in billing data (POS) that are natural persons, is subject to the principles and guarantees of the personal data protection regulations (RGPD).

According to article 86 of the RGPD:

"The personal data of official documents in the possession of some public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the Member States that apply them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

Law 19/2014, of December 29, 2014, on transparency, access to information and good governance (hereafter, LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1). The mentioned article 2.b) defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law".

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

However, in accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to information that contains personal data, it is necessary to assess whether or not the right to data protection of the affected persons justifies the limitation of the right of access to public information regulated in the legislation that invokes the claimant.

III

For explanatory purposes, given that the claimant's request for information refers, in some cases, to information relating to the Hospital (points 1 and 2 of the claim) and, in others, to information that could be unrelated, in the terms we will refer to later, to the Foundation and the Hospital itself (points 3, 4 and 5 of the claim), below we will separately analyze the requests for information specified in points 1 and 2 of the request for access, on the one hand, and in points 3, 4 and 5, on the other.

Regarding points 1 and 2, the person making the claim requests:

- "1. Position, director or manager, who makes operational decisions, day to day, in relation to the Hospital's emergencies.
- 2. "Number of those responsible: Managing Director and/or Financial Director and/or Economic Administrative Director, Medical Director, Emergency Manager or Director, Admissions Manager and User Service Manager since the beginning of the activity by (company) up to the present time or until the service has ceased to be provided.

As can be seen from the response report that the Foundation sent to the claimant at the time (April 15), regarding point 1, it was stated that: "In terms of care, the Hospital's Emergency 'it serves everyone and, therefore, there is no one responsible because there is no reason to justify it. In terms of admissions linked to invoicing, the person responsible is the corresponding Department of Economics."

The Foundation would have provided the identity of the Managing Director and the Financial Director, identifying by name and surname the people who would have held these positions, and provided the information broken down by year. As can be seen from the file, he would also have been informed of the identity of the person responsible "over the years for the relationship or for coordinating the relationship between (the Foundation and the company)". Therefore, it must be understood, given the information available, that the identity of these charges is already known to the claimant.

(...).

The LTC imposes on obliged subjects, among others, public sector foundations (eg art. 3.1.b) LTC), and therefore on the Foundation, the obligation to disseminate certain public information.

Specifically, article 9.1.b) of the LTC imposes the obligation of active publicity of "the internal organizational structure of the Administration and of the bodies and entities referred to in letter a, with the identification of those responsible of the various bodies and their professional profile or trajectory.

That is to say, with respect to Hospital or Foundation personnel who occupy not only "managerial" positions, but also any other position that can be qualified as "organ", it would be included in this obligation of active advertising.

Beyond this, it cannot be ruled out that through the right of access it is possible to access the identification of the holder of other positions of special responsibility or of a certain relevance in decision-making within the organization. In this sense, it does not seem that it can be questioned that certain positions, such as the person in charge of user attention or the person in charge of the emergency service of a hospital center (which the claimant requests to know), can be considered as positions of a certain level of responsibility for these purposes.

Since the claim does not refer to specially protected data (art. 23 LTC), it is necessary to apply article 24.1 of the LTC, according to which: "Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail."

Taking into account the provision of article 24.1 LTC, it does not seem that the data protection regulations should be an obstacle to give access to the requested information.

It is a different matter that some of these positions, as the Foundation states in its allegations (letter of April 15, 2019), do not exist (such as the emergency care manager, as the Foundation states). In this case, obviously, the Foundation will not be able to inform the claimant.

Certainly, as the Foundation points out, article 24.1 of the LTC foresees, as an exception to which access to identifying data must be granted, the concurrence in the specific case of other rights that must be protected.

As the Foundation points out, in accordance with article 22.1 LTC: "The limits applied to the right of access to public information must be proportional to the object and purpose of protection. The application of these limits must take into account the circumstances of each specific case, especially the concurrence of a higher public or private interest that justifies access to the information."

According to the Foundation's report, dated June 13, 2019, one of the reasons why it would not be necessary to identify the people who hold certain positions is that they would not have had direct contact with the person served in another hospital center (a person who, as can be seen from the file, is a relative of the claimant), and therefore, as there is no "causal link" between the patient treated and these people, it would not be necessary to provide the required information.

However, it must be borne in mind that, in accordance with article 18.4 of the LTC, the exercise of the right of access "is not conditional on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of any rule".

Although this Authority does not question the lack of causal link referred to by the Foundation (in relation to the care that a family member of the claimant would have received in another hospital center other than the Hospital), the claimant neither it does not necessarily have to prove that this causal link exists, because the LTC does not require it to be able to access the identity of people who hold certain positions.

Knowing the identity of people who hold positions of certain relevance in an entity subject to transparency legislation can comply, in general terms, with the duty of transparency with regard to the day-to-day operation of these entities, which in principle citizens must be able to know. Thus, it must be insisted that the request (points 1 and 2), refers exclusively to knowing the name and surname of certain positions (therefore, merely identifying data), which, based on the provision of article 24.1 LTC, would be information directly related to the organization and operation of the Hospital.

For all the above, it must be concluded that the data protection regulations would not prevent the claimant's access to knowing the identity (name and surname) of the positions to which she refers (points 1 and 2).

IV

Below we refer to the other sections of the access application (points 3, 4 and 5):

At the outset, it must be taken into account that article 2.b) of the LTC defines public information as "information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions."

As can be seen from the file, the Foundation has repeatedly stated that it does not have the requested information and, furthermore, that it has no legal obligation to know this information.

As stated by the Foundation in its letter of April 15 and in the report of June 13, 2019, in relation to point 3 of the request, "the Foundation is not obliged to provide or disclose this information, relating to (company) invoices and personal data of third parties obliged to pay." In the same sense, with regard to the information requested in points 4 and 5, the Foundation's response (letters of April 15 and June 13) is that the Foundation "does not have access to this information, nor obligation to have one".

According to article 1.b) of the LTC, this Law is applicable: "To public bodies and entities, companies with a majority stake or linked, public sector foundations, public law entities dependent on or linked to administrations (...)."

According to article 1.2 of its Statutes (Government Agreement of December 27, 2012), the Foundation "is a non-profit entity whose assets, returns and resources obtained are permanently assigned to the realization of purposes of general interest provided for in these statutes". According to article 4.2 of the Statutes "The Foundation has its own legal personality and enjoys full legal and operational capacity, due to the granting of its charter in public deed and registration in the Registry of Foundations of the Generalitat de Catalunya ."

It is necessary to refer to Law 40/2015, of October 1, on the Legal Regime of the Public Sector, specifically, article 2.2, according to which:

"1. This Law applies to the public sector which includes: a) The General Administration of the State. b) The Administrations of the Autonomous Communities. c) Entities that make up the Local Administration. d) The institutional public sector.

2. The institutional public sector is integrated by:
(...) b) The entities of private law linked or dependent on the Public Administrations that will be subject to the provisions of the rules of this Law that specifically refer to them, in particular to the principles provided for in article 3, and in any case, when they exercise administrative powers."

On the other hand, according to Law 4/2017, of March 28, budgets of the Generalitat de Catalunya for 2017, the budgets of the Generalitat are formed, among others, by the "budgets of foundations with full participation or majority of the Generalitat" (art. 1.1.g) Law 4/2017). The table in section 8 of the same law, corresponding to the budgets of foundations with total or majority participation by the Generalitat (1.1.g)), includes the amount relative to the Foundation.

According to the Public Sector Register of the Generalitat of Catalonia, the Foundation is a public sector entity of the Generalitat, affiliated to the Department of Health.

The Foundation belongs to the public sector. Therefore, it results from the application of 1.b) of the LTC, and the information that the Foundation prepares or has at its disposal must be considered "public information" (art. LTC).

It should be borne in mind that, according to the information available, the company carries out the invoicing of services to the people served, as a contracting company, within the framework of the contractual relationship established with the Foundation.

Based on this, for the purposes of the data protection regulations, it should be understood that the Foundation is responsible for the treatment (art. 4.7 RGPD) of the personal data of the natural persons treated at the Hospital, regardless of whether it is holders of the right to health protection and health care, including foreign citizens residing in Spain (art. 1.2 LGS), or foreigners not resident in Spain (art. 1.3 LGS). In any case, the company would treat the personal data of the people treated and billed for the services provided to them at the Hospital, as the person in charge of the treatment (art. 4.8 and art. 28 RGPD).

Starting from this basis, beyond the particularities of the specific case, as responsible for the treatment, the Foundation should be able to know all that information that affects the treatment of personal data of the patients treated or of their companions by of the person in charge (the company), carried out on behalf of the Foundation.

Therefore, given that the Foundation could have the required documentation, if this is the case it could be qualified as "public information" for the purposes of transparency legislation (art. 2.b) and 18 LTC).

v

In point 3, the list of "Insurance clients and/or any other third party obliged to pay (not individuals), to whom invoices have been issued by (company)" is claimed.

In point 4 of the complaint, the "relationship of the Spanish or foreign insurers and/or third parties obliged to pay, which have signed contracts (...) with (company)" is requested.

And in point 5 of the complaint it is requested: "Data from the Point of Sale Terminal (POS), used by (company) during the process of managing the invoicing of foreigners".

In accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information that contains personal data, it will be necessary to assess whether or not the right to data protection of the affected persons would justify the limitation of the right of access to public information regulated in the LTC, which the applicant invokes.

According to article 16.3 of Law 14/1986, of April 25, General of Health (LGS): "the invoicing for the attention of these patients will be carried out by the respective administrations of the Centers, taking as a basis the effective costs. These revenues will have the status of the Health Services. (...)".

In turn, article 83 of the same LGS adds that: "Los ingresos de la asistencia sanitaria in los supuestos de seguros obligatorios especiales y en todos aquellos supuestos, insured or not, in which a third party appears obliged to pay, will have the condition of own income of the corresponding Health Service. The expenses inherent in the provision of such services will not be financed with the income of the Social Security. (...)".

The second paragraph of article 83 establishes that: "For this purpose, the Public Administrations that had provided sanitary care to the users in such cases will have the right to claim from the responsible third party the cost of the Services provided".

The public administration's right to claim (art. 162 EAC) in relation to the cost of services provided in cases where there is a third party obliged to pay, is specified in Royal Decree 1030/2006, of September 15, which establishes the portfolio of common services of the National Health System and the procedure for its updating (art. 2.7) Annex IX of the same Royal Decree, provides the following:

"In accordance with the provisions of article 83 of the General Health Law, in additional provision 22 of the Consolidated Text of the General Social Security Law, approved by Royal Legislative Decree 1/1994, of June 20, in the article 2.7 of this Royal Decree and other applicable provisions, the public health services will claim from the third parties obliged to pay the amount of the care or

health benefits provided directly to people, (...), in the following cases: (...)

6. Foreign citizens: a)

Insured or beneficiaries in a member state of the European Union, the European Economic Area and Switzerland, not resident in Spain, under the assumptions and conditions established in the Community Regulations on Social Security. b) Insured or beneficiaries of other foreign countries, not resident in Spain, under the assumptions and conditions established in the bilateral agreements on Social Security signed by Spain."

On the one hand, the "third parties obliged to pay" can be legal entities, mainly insurance companies that perform these functions within the framework of the social security agreements signed by the administration (annex IX, section 6.b), R. Decree 1030/2006).

It should be noted that information on these legal entities (the insurers themselves) is outside the scope of protection of data protection legislation (recital 14, and article 1 RGPD, and article 1 LOPDGDD).

Therefore, in relation to insurers or other "third parties obliged to pay" that are legal entities, there would be no impediment, from the perspective of data protection, to give access to the person claiming to the information to which refer to points 3 and 4 of the claim, referring to the legal entity.

On the other hand, in any other case in which the third party obliged to pay is not a legal person (an insurance company), but a natural person, for example, people who have parental authority in relation to minors, or in other cases in which a private individual takes charge of the billing of the care service received by a patient, certainly there could also be information, not only of the person who assumes the expense (identification, contact, banking data, etc. .) but even of the patient, who would be subject to the principles and guarantees of data protection.

Having said that, and once it becomes clear that it would not be justified to hand over information about the natural persons who have taken charge of the payment, the Foundation has, or may have, information about the patient (in addition to identifying or contact data , there may be data relating to the health care provided that must be paid for, date of hospital admission, details of the care received, etc.).

From the perspective of data protection, the data referring to the healthcare provided to the patient would be health data (article 4.15 RGPD), deserving of special protection.

According to article 23 of the LTC: "Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request."

Therefore, for the purposes of interest, and given the provision of article 23 of the LTC, these patient data, which the Foundation could have, should in no case be the subject of communication following the request formulated

But aside from health data, there may also be other types of information linked to the services provided or the payment made that may not be considered health data.

In this regard, it should be borne in mind that the claimant herself explicitly states in the application that she is requesting the "Relation of clientes Aseguradoras (....) (not private)...". The claimant also refers, in the statement of objections to the Resolution of April 15, 2019, of the Foundation (p. 10), to which she wants to know "Las aseguradoras extranjeras, o las que asumen el pago of the costs of assistance provided to foreign patients, (...)".

On the other hand, in relation to the POS information in the letter of April 15, the claimant states the following:

"Starting from the fact that the legal obligation is that the POS was a collection instrument, whose ownership should correspond to the hospital, in order to comply with the provisions of article 83 of the General Health Law, we understand that the information contained in the itself must be publicly accessible.

Logically, if there is information that could identify specific people or information with restricted access such as personal banking data (...), please take this into account so that, as has been done on other occasions, it is removed or covered appropriately. The claimant is only interested in a sample of the amounts collected through the POS and the frequency with which it was used. Among other reasons, the claimant is interested in seeing if she can identify herself through the POS, a certain repetition in the collection of transactions of €500 which corresponds to the amount that was requested from (a family member)."

Thus, the claimant herself makes it clear that she is only requesting access to a sample of amounts collected, and requests that any information that allows individuals to be identified (such as bank details, etc.) be deleted. Therefore, the information requested should not contain data that allows identification of natural persons, either directly or indirectly (art. 5.1.e) RGPD).

In other words, with regard to points 3, 4 and 5 of the claim, the request does not refer to natural persons who may be third parties who have taken charge of the payment or other information that allows the identification of specific natural persons.

Facilitate access to information on the invoicing of services prior to the dissociation of the personal data contained therein, so that it is not possible to identify the persons affected either directly or indirectly (it is, in fact, an option expressly provided for in the regulations of transparency (art. 25 of the LTC).

For all the above, it must be concluded that the data protection regulations would not prevent access to the requested information, given that the requesting person already excludes the information that allows the identification of specific natural persons. Therefore, prior to delivery it will be

remove any information that could identify the physical persons affected, either the patients or the people who made the payments.

conclusion

The data protection regulations would not prevent the claimant's access to know the identity (name and surname) of the responsible or managerial positions to which the claimant refers.

Data protection regulations would not prevent access to data from third parties obliged to pay who are legal entities. This information must not include personal data of natural persons, either the patients themselves or the natural persons who have made the payments.

Barcelona, July 25, 2019

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