

Ref.: IAI 28/2020

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 against the partial estimate by a body in the field of health of a request for information in relation to data on the health treatment received and other issues

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 the claim submitted in relation to the partial estimate by a body of the health area of a request for information in relation to data on health treatment received and other matters.

Having analyzed the request, which is accompanied by a copy of the file of the claim submitted, in accordance with the report of the Legal Counsel, the following is reported:

Background

1. On January 10, 2020, an application was submitted to a health authority (hereafter, the entity) requesting access to various information related to a treatment received. The requested information can be grouped into the following aspects:

- The health treatment received, to the extent that he requests "everything they have about my radiation. In images and writing", as well as other more specific aspects of the treatment.
- Technical data of the equipment used in its treatment, referring to incidents, the quality program, registration sheets of the revisions carried out by the technical and maintenance service, periodicity of inspections, obsolescence...
- The team of technicians in the radiotherapy service, with reference to their identification, training, experience, type of contract, schedule and working hours, as well as some organizational aspects.
- Organizational and operational aspects of a healthcare center which refer to the referral of patients from the radiotherapy service to another centre, the acquisition of a new device and its commissioning.

2. On February 10, 2020, the entity decides to partially approve the request for access to public information. Specifically, it recognizes the access to public information requested with the exception of the "Form of acquisition [...] and acquisition file" of the equipment that the radiotherapy service of a center has, in no to have this information, as well as, in relation to the technicians of the radiotherapy service, the type of their employment contract and the working hours, considering that the limit to data protection set out in the regulations is applicable of transparency

3. On March 9, 2020, the applicant filed an optional appeal before the entity in which, in addition to stating that the information already provided to him is not complete, he opposes the rejection of access to information relating to the technicians of the radiotherapy service who had assisted him in the treatment, basing it on the fact that "these data are usually public, so the types of contracts are regulated in the Law and the schedules have no significance from the point of view of personal data".

4. On March 11 and 12, 2020, the entity addresses the person requesting the documentation and information it has with respect to which access has been estimated through the resolution of March 10 February 2020.

5. On July 8, 2020, the applicant sends a statement of objections to the entity in which he reiterates the deficiency of the information provided and lists, point by point, the aspects that need to be completed or clarify In this regard, the information that is requested to be completed broadly refers to:

- The health treatment received. The treatment planning document, the diary of operations in the part that affects it, as well as other information and explanations relating to certain aspects regarding the suitability of the treatment would not have been attached.
- Technical data of the equipment used in its treatment. It has not been stated in some cases, as it is in the clause report and annual reports of 2015 and 2016, as well as with respect to the quality program, who would be the signatory of those. There is also a lack of technical information, which would not be relevant from a data protection perspective.
- The team of technicians from the radiotherapy service. The information relating to the work experience of the staff, the type of employment contract and their schedule is not attached.
- Organizational and operational aspects of one of the centers which would not affect data personal

6. On July 24, 2020, the entity notifies the person requesting the estimated resolution of the appeal filed. However, the entity states the following:

"[...] it is specified that the estimate of the present optional appeal for replacement refers solely and exclusively to the right held by the interested party to access the information referred to in points 43 and 44 of the first antecedent [relative information to the type of employment contract and the hours of the technicians], without the same being pronounced on any other statement, opinion or observation that the appellant formulates in the same letter of appeal, despite not being strictly

In this sense, it provides the information in the following terms:

"Type of employment contract of this staff. The contractual relationship of the technical staff is distributed between personnel with indefinite employment contracts and personnel with temporary employment contracts by interim (substitutions). All these professionals are Auxiliary Technicians in Radiotherapy or Auxiliary Technicians in Health.

[...] Schedule of this staff. Since the radiotherapy service is open from 08:00 to 20:30, the technicians are distributed in morning and afternoon shifts from Monday to Friday. There is no work on the weekends, but on fixed holidays [...]"

7. On August 23, 2020, the applicant filed a complaint with the GAIP, in which he alleges that the information provided by the entity is incomplete and insufficient, requesting that it be completed. The person making the claim attaches, among other things, the letter presented to the entity on July 8, 2020, specifying the points he considers unfulfilled.

8. On August 24, 2020, the GAIP sent the claim to the entity, requesting a report that sets out the factual background and grounds its position in relation to the claim, as well as the complete file and, if applicable, specify the third parties affected by the claimed access.

9. On September 16, 2020, the entity sends a legal report in which it states that, in relation to the points that were initially rejected, it understands that the person claiming has given up with respect to the information related to the "Form of acquisition [...] and acquisition file" of the equipment that the radiotherapy service of one of the centers has, on the basis that it would be extracted in this way due to the fact that it would not have requested it in the replenishment and complaint before the GAIP and, with respect to the information relating to the type and schedule of the technical staff of the radiotherapy service, he states that information would have been provided in generic terms because, on the one hand, "the information on the professional experience is could have been presented broken down person by person, but the same statement would have been applicable to all of them that was included in the communication of information that accompanied the resolution of the replacement appeal", and on the other hand, "the information about the staff schedule cannot go beyond the organization of service shifts, given that the request had not been formulated in more specific terms and because it is reasonable to think that granting detailed information about the

Finally, he adds that the person making the claim "cannot claim access to the curriculum vitae of the workers of the Radiotherapy Service, as it is irrelevant and harmful to the privacy of the workers to make public information that has nothing to do with the fulfillment of the academic requirements and "professional accreditation necessary for the exercise of the health activity that they develop in the aforementioned Service".

10. On October 1, 2020, the GAIP insists that the entity pronounce itself in relation to all the information that is claimed, which are not only the rejected points of the request, but also in relation to the objections to the information received as a result of the partially estimated resolution. In particular, it requests that the pronouncement "must be in relation to access to the information that, both in the appeal for reinstatement and in the claim, the claimant claims not to have received, or to have received partially or not satisfactory".

11. On October 6, 2020, the GAIP addresses a request for a report to this Authority in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance.

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 issue a report to 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, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (art. 4.1 of Regulation 2016/679, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and by which Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

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. Consequently, with respect to the claims of the claimant, this report will not include any pronouncement in relation to access to public information relating to the equipment of the radiotherapy service of one of the centers, as well as the requested regarding the organization and operation of the other centre, insofar as personal data are not affected.

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 on the basis of the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, 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

In accordance with what has been expressed above, the data protection regulations apply to the treatments that are carried out on any information "about an 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) of the RGPD).

Article 4.2) of the RGPD considers "treatment": any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction".

In accordance with the provisions of article 5.1.a), any treatment carried out on personal data must be lawful and, in this sense, the RGPD establishes the need to comply with one of the legal bases of the article 6.1, among which section c) provides for the assumption that the treatment "is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

For its part, article 86 of the RGPD provides that "the personal data of official documents in the possession of any 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, organism or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation".

The regulation and guarantee of public access to official documents held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), which recognizes people's right of access to public information, understood as such "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 that supplied by the other obliged subjects in accordance with the provisions of this law" (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

Consequently, given that the documentation requested by the claimant is related to the healthcare treatment received, as well as to the equipment and human team of the radiotherapy service and aspects related to the operation of the entity, being information which would be in the possession of the latter as a result of its activity, must be considered as public for the purposes of article 2.b) of the LTC and subject to the regime of the right of access (art. 18 LTC). It should be noted, however, that this right of access is not absolute and may be denied or restricted for the reasons expressly established in the laws.

III

The request submitted to the entity, on January 10, 2020, aims, among other things, to access the information related to the health care that the claimant would have received. In particular, he allegedly requested access to "everything they have about my radiation. In images and writing", as well as different more specific issues such as the identification of the people who would have attended, treatment sheets or informed consent in relation to "tattoos and CT".

According to the complaint before the GAIP, and in particular the attached documentation, the entity would have provided documentation and information relating to its treatment, which the person making the claim would consider incomplete and insufficient.

Regardless of this fact, it should be borne in mind that the original request referred to documentation related to health care received. Consequently, the provisions contained in Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation (hereinafter, law of 'patient autonomy') which provides that the patient is the holder of the right to information relating to his care process (articles 2 and 3), collected in the clinical history, which constitutes "[...] the set of documents relating to the healthcare process of each patient while identifying the doctors and other healthcare professionals who have intervened" (article 9.1), and guaranteeing that it is "an instrument fundamentally intended to help guarantee adequate assistance to the patient" (article 11) .

Article 10 of this Law provides that the medical history must contain, at least, the following:

"1. The medical history must have an identification number and must include the following data:

a) Identification data of the patient and of the assistance: Name and surname of the patient.

Date of birth.

sex

Usual address and telephone number, in order to locate you.

Date of attendance and admission, if applicable.

Indication of origin, in case of referral from another care center.

Service or unit in which assistance is provided, if applicable.

Room and bed number, in case of admission.

Doctor responsible for the patient.

Likewise, when it comes to users of the Catalan Health Service and care is provided on behalf of this entity, the personal identification code contained in the individual health card must also be recorded.

b) Clinical care data: Physiological and pathological family and personal history.

Description of the disease or current health problem and successive reasons for consultation.

Clinical procedures used and their results, with the corresponding opinions issued in case of specialized procedures or examinations, and also the interconsultation sheets.

Clinical course sheets, in case of admission.

Medical treatment sheets.

Informed consent form if applicable.

Information sheet provided to the patient in relation to the diagnosis and the prescribed therapeutic plan, if
place

Epicrisis or discharge reports, if applicable.

Voluntary discharge document, if applicable.

Necropsy report, if available.

In the case of surgical intervention, the operating sheet and anesthesia report must be included, and in the case of childbirth, the registration data. c) Social data: Social report, if applicable.

2. In hospital clinical records, which often involve more than one doctor or healthcare team, the actions, interventions and prescriptions made by each professional must be recorded individually. [...]"

It should be noted that article 24.3 of the LTC establishes that requests for access to information that only contains data of the person requesting must be resolved in accordance with data protection regulations :

"3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the legislation on the protection of personal data. "

Therefore, this requested information would belong to the care process received from the entity, being documentation that must be included in the applicant's clinical history and to which he has the right of access recognized by the regulations for the protection of personal data.

In accordance with this, the regime applicable to the request would be that provided for in article 15 of the RGPD with respect to the right of access of the owner of the personal data. This article provides that:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access 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 the elaboration of profiles, 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."

Considering that the person requesting seeks access to information related to the assistance received, it will also be necessary to take into account the specific regime of access to the clinical history provided for in the Patient Autonomy Law in article 13, the which provides for the following:

"1. With the reservations indicated in section 2 of this article, the patient has the right to access the documentation of the clinical history described by article 10, and to obtain a copy of the data contained therein. It is up to the health centers to regulate the procedure to guarantee access to the clinical history.

2. The patient's right of access to the documentation of the clinical history can never be to the detriment of the right of third parties to the confidentiality of their data appearing in the aforementioned documentation, nor of the right of the professionals who have involved in the preparation of this, who can invoke the reservation of their observations, appreciations or subjective notes.

3. The patient's right of access to the clinical history can also be exercised by representation, as long as it is duly accredited."

In accordance with the provisions of article 24.3 of the LTC, the processing of the request for access to the medical history and also the claim against the denial or partial denial of this information had to be processed through the regime of the RGPD, which in its article 77 establishes that, without prejudice to any other administrative recourse or judicial action, any person who considers that the data controller has infringed the RGPD has the right to submit a claim before the 'control authority.

Law 32/2010, of October 1, of the Catalan Data Protection Authority provides in article 5.b) that this control authority is competent to "resolve protection claims made by affected persons regarding the exercise of the rights of access, rectification, cancellation and opposition".

Therefore, this Authority considers that, in accordance with article 24.3 LTC, at this point the claim should have been inadmissible by the GAIP, given that the Catalan Data Protection Authority is the competent authority to know of claims in relation to the right of access provided for in article 15 RGPD.

In any case, and since it is not known that in relation to the requested information any of the professionals wanted to assert their right to preserve the confidentiality of their subjective notes, nor is it appreciated that it could harm the rights of third parties, no there appears to be no impediment to the delivery to the applicant of the information contained in his medical record. And this, in accordance with what is established in article 10 of Law 21/2000, would also include the identification and professional category or job held by the professionals who have intervened in the assistance.

IV

On the other hand, in his letter of complaint to the GAIP, the person making the claim would have also expressed the insufficiency of the information that the entity conveyed to him in relation to the technicians of the radiotherapy service. In particular, in the letter of access presented to the entity he would have made the following requests:

"[...]

-In the middle of the radiation days, why did the accelerators change? Techniques also changed. Tell me why and what they were and degree.

-What training and experience did they have?

-What type of employment contract did they have?

-What time did they have?

-How many technicians were working, how many hours per day and per week did the same technician work"

It must be noted that although initially the entity would not have estimated access with regard to the type of employment contracts and the schedules of the technicians, this information was subsequently provided, albeit in a generic way, as a result of the appeal filed by the person claiming

In the legal report submitted to the GAIP, the entity defends the generic nature of the information provided given the coincidence in the minimum professional training of all the service technicians and that, on the other hand, granting access to the schedule detailed and individual of each technician would infringe on their right to privacy. Finally, he would have stated that the person making the claim cannot claim access to the resumes of the technicians, "resulting irrelevant and harmful to the privacy of the workers to make public information that has nothing to do with the fulfillment of the academic and professional accreditation requirements necessary for the exercise of the health activity that they develop in the said Service".

The information that the claimant wants to access, in view of its type, must be analyzed from the point of view of article 24 of the LTC, ruling out that it must have special protection, from in accordance with what is provided for in article 23 of the LTC, since it does not refer to personal data relating to the ideology, trade union affiliation, religion, beliefs, racial origin, health and sexual life of the technicians nor with respect to the commission of 'criminal or administrative offenses without public reprimand.

Therefore, article 24 of the LTC provides for the following:

"1. 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 data

merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the people affected. To carry out this weighting, the following circumstances must be taken into account, among others:

- a) The elapsed time.
- b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.
- c) The fact that it is data relating to minors.
- d) The fact that it may affect the safety of people.

[...].”

With regard to the identity of the professionals who have attended to you and their professional category or job they occupy, as we have explained, the patient autonomy regulations and the data protection regulations enable access to this information

With respect to the rest of the issues, from the claim presented to the GAIP as well as from the request initially presented to the entity, it can be deduced that the person making the claim has access to said information with respect to the people who they would have attended during the healthcare treatment.

Article 18.2 of the LTC provides that the exercise of the right of access is not conditioned on the concurrence of a personal interest, and is not subject to motivation nor does it require the invocation of any rule. However, for the purposes of the weighting of article 24 of the LTC, knowing the motivation for which the claimant wishes to access the information may be a relevant element

From what the claimant states through the different writings contained in the file, it can be deduced that the reason that would have motivated the request for access to said information would mainly be the disagreement with the assistance information that would have been provided to him , regarding the procedure, risks..., as well as the non-conformity with the organization and operation of the entity's radiotherapy service, in particular, with respect to the technology used, maintenance of the devices and, ultimately, in relation to the suitability of the treatment.

Although some of the information requested by the patient can certainly give him elements of judgment about the means available to the center (equipment, availability of personnel in each of the shifts, qualification, etc.), it does not seem necessary that regarding information on these matters must include personal information. Offer individualized information about training, experience, type of employment contract, etc. it is information that makes it possible to obtain a professional profile of each of the people affected and, even more so, if more information is offered about shifts or working hours on an individual basis. It is therefore a very invasive measure for the people affected and unnecessary to be able to evaluate the provision of the service.

In this sense, it is fully respectful of the personal data protection regulations to offer information on the qualification required in each of the professional categories that have intervened in your care and your link with the health center, and on the existing shifts, without that appears as justified to offer information on the training or individualized experience of each of the people who have intervened in the assistance or the shifts and schedules they have worked.

v

Lastly, the person making the claim would also be dissatisfied with the content of some reports relating to the equipment of the radiotherapy service, such as the annual reports or check-up and incident record sheets, in which it would not be record the signature of the person who would have extended them.

This Authority only has to analyze this aspect from the perspective of the protection of personal data. In these documents, the only personal information that seems predictable to contain is the identification of the people who have intervened in their preparation. For this reason, this question must be analyzed from the perspective of article 24.1 of the LTC according to which: "access must be given to public information if it is information directly related to 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".

Consequently and, apart from exceptional cases in which due to the concurrent circumstances and, especially, due to the allegations that may have been made by these professionals it is justified to limit access to this information, in principle there would be no impediment to information containing data merely identifying them.

conclusion

In accordance with article 24.3 LTC, the resolution of the request for access to the applicant's medical history had to be processed in accordance with the RGPD and the eventual claim must process before the Catalan Data Protection Authority, competent authority to hear claims in relation to the right of access provided for in article 15 RGPD. In any case, from the information contained in the file, there are no elements that prevent access to all the claimed information contained in the clinical record, including the identity and category (or position they occupy) of the professionals there has intervened

The data protection regulations prevent individualized provision of data on training and experience or those relating to the contract, working hours, and technicians' schedules. On the other hand, the names of personnel or technicians with powers of verification and extension of reports relating to the verification and maintenance of radiotherapy service equipment c

Barcelona, November 2, 2020