

IAI 7/2022

**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 submitted by a citizen against a health Consortium for the denial of access to documentation related to her employment situation and her medical history**

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 by a citizen against a health consortium for the denial of access to documentation related to your employment situation and your medical history.

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. On December 15, 2021, a citizen submits a request for access to various documentation, to the Health Consortium, specifically, to a consortium hospital. The applicant, who according to the file is an employee of the mentioned Hospital, requests information about her working day (requests for change of service and work calendar for the last 13 years, points 1 and 2 of the application), about a "hostile incident" that according to the applicant she would have suffered in the workplace (point 3 of the application), and about access to her hospital medical history and shared medical history -HC3-, which would have occurred from the Hospital (point 4 of the request).
2. The file contains a copy of the letter dated January 14, 2022 from the Health Consortium, in which the applicant is informed of various organizational issues of the entity, in relation to the questions raised. Specifically, with respect to the traceability of access to the shared clinical history (HC3), the Consortium refers the applicant to the Department of Health and, with regard to the Hospital's own clinical history, is informed of the extension of deadline to respond, according to what is established in article 12.3 of the RGPD and article 24 of the LTC.
3. On January 17, 2022, the applicant submits a complaint to the GAIP, in which he states that the Consortium would not have provided him with the requested information. Specifically, the claimant explains that:

"Different documents have been requested in the register dated 12/15/2021 (12/15/055-G) CSA Hospital (...). The company does not deliver any of the requested documentation requesting an extension of 2 months only to deliver the documentation requested in point 4 of the 15/12/055-G register.

As for points 1, 2, 3, he does not provide the requested documentation and as for point 4, I add that it is clear from his writing that he will not deliver what is really requested, since they do not plan to deliver in those two months for point 4 accesses that have been produced from within the Hc3 institution that is the shared history, they only do

reference to hand over medical history and I have requested that both consulted documents be handed over."

4. On January 20, 2022, the GAIP communicates to the Consortium the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to public information, and the identification of the third parties affected by the access that is claimed, if any.

5. On February 26, 2022, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

#### 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 (Article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereafter, RGPD).

Therefore, any other limit or aspect that does not affect the personal data contained in the requested information is outside the scope of this report, as would be the case of the limit established in article 21.1.b) of the LTC, relating to the investigation or sanction of criminal, administrative or disciplinary infractions, the application of which could lead to the claimant's right of access being denied or restricted for the purposes of protecting the investigation .

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 the claim to the GAIP, presented on January 17, 2022, the claimant, an employee of the Hospital, would have requested from the Consortium various information related to his work calendar, to an incident that would have occurred in the 'work environment - which the claimant describes as hostile - and also about the accesses to her hospital clinical history and about the accesses that, from the Hospital, would have occurred to the shared medical history (HC3).

The claimant explains, in the claim submitted to the GAIP, that the Consortium would not have given him the requested documentation.

Given the claim in these terms, it is necessary to start from the basis that the data protection regulations apply to the treatments that are carried out on any information about identified or identifiable natural persons (art. 4.1 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".

Article 6 of the RGPD establishes that in order to carry out a treatment, such as the communication of data necessary to attend to an access request, it is necessary to have a legal basis that legitimizes the treatment, either the consent of the affected person (section 1.a)), whether it is one of the other legitimizing bases provided for, such as, that the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5 on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data it can only be considered based on this legal basis of article 6.1.c) of the RGPD when this is established by a rule with the rank of law.

At the same time, according to article 86 of the RGPD: "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, body or entity in accordance with the Law of the Union or of the Member States that applies to 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, on transparency, access to public information and good governance (LTC), 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 consequence

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 (LT) is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 ( public information).

The information relating to the workers available to the company (in this case, the claimant's information) related to various situations that may occur in the workplace and which would have affected this worker, as well as the information relating to her medical history and the health care that the claimant has received as a patient of the Hospital and of the public health system, is "public information" for the purposes of article 2.b) of the LTC.

Article 24.3 of the LTC states that "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 that establishes the legislation for the protection of personal data."

However, although the requested information may include, to a large extent, data from the claimant herself as a worker and, where appropriate, as a patient of the Hospital, the provision of Article 24.3 LTC does not in this case, it would apply to the set of information requested, since this does not exclusively contain data from the claimant, but also data from other natural persons that may appear in the documentation and information requested.

Having said that, public information is subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by the laws (article 20 et seq. LTC).

Specifically, with regard to the claimed information that contains personal data, it is 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 invoked by the claimant. Thus, it will be necessary to take into account the transparency regulations, specifically, the provisions of articles 23 and 24 of the LTC.

### III

- Points 1 and 2 of the claim: Request for information regarding the claimant's working hours and calendar:

a) "POINT 1  
CHANGE OF SERVICE / ICAM I am

not asking for explanations from the institution, but for the relevant documentation on the resolution of the ICAM that are proven facts and that they have omitted in their response. Copy of all the requests for extension, change of service registered by me during the last 13 years, including all the records in Management (...).

b) "POINT 2. CALENDAR 2021 VERSUS CALENDAR 2022":

In summary, as can be seen from the letter addressed to the GAIP and from the file, the claimant considers that the Hospital would not have followed the recommendations that the Catalan Institute of Medical Assessments (ICAM) would have made in relation to their situation and working conditions. According to the claimant, the Hospital would not have attended to her repeated requests for improvement or change of working hours and working hours. The complainant requests to know the reasons why, according to her, these recommendations would not have been followed. The claimant also requests that she be informed about the submission of documentation relating to her case to the W

On the other hand, the claimant asks to know the reason why her work calendar would have been modified "unilaterally" with respect to that of 2021; know who would have authorized this change; and for what reason. In the letter addressed to the GAIP, the claimant requests that her work calendars for the last 13 years be provided.

Therefore, in points 1 and 2 of the claim, the claimant requests documentation relating to her own working conditions (working hours and schedules) and the various requests that the interested party herself would have made over the years in relation to this question her situation as a worker of the Hospital, as well as information relating to its processing.

The claimed information has to do with the resolution of the ICAM mentioned by the claimant. It should be borne in mind that the function of the ICAM, among others, is to review or assess the state of health of people on medical leave and to decide on the continuation of medical leave or discharge, temporary incapacity or permanent

Article 23 of the LTC provides that:

"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 sexual 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 by means of a written which must accompany the application."

However, in the case at hand, given the information available, it should be borne in mind that the health information that could be contained in the requested documentation would be information from the person making the claim, and not from other people. The person making the claim, as the owner of their personal information, including the health information the Hospital may have linked to the information they claim, must have access to this information (eg art. 15 RGPD).

Therefore, the provision of article 23 LTC, does not constitute any impediment to be able to give the claimant access to her own health information related to the examined application (points 1 and 2).

With regard to access to data other than those provided for in article 23 LTC, article 24.2 of the LTC must be applied, which provides the following:

"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 affected persons. 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. (...)."

At the outset, it must be noted that, according to the information available, the claimant is requesting information relating solely to her particular employment situation, and not to the working conditions (calendar and timetables) of other employees of the Hospital.

For the purposes of the weighting of Article 24.2 LTC, it should be remembered that the right of access to one's personal information (in the terms of Article 15 RGPD) can be a decisive element.

With regard to the right of access to one's own information (art. 15 RGPD), there would be no inconvenience in giving the claimant access to information that refers solely to her person and that is contained in the documentation available to the Hospital. On the other hand, in the case examined there is no limit to the right of access recognized in Article 15 RGPD, nor any other circumstance that advises limiting the claimant's access to her own personal data.

Therefore, the claimant must be able to access the information relating to her person, which the Consortium (the Hospital) has, specifically, the information relating to her own working conditions (work calendar and schedules assigned as employee of the Hospital), and to the changes that have occurred in these conditions. Also, the claimant must be able to know the information on the application, if applicable, of the recommendations of the ICAM regarding her working day as an employee of the Hospital.

Having said that, and aside from the information referring to the claimant herself, the information referred to in points 1 and 2 of the claim could contain data from the professionals who have processed the claimant's requests, or who have intervened in the decision-making related to the affected person's work schedule.

With regard to this information, it should be borne in mind that section 1 of article 24 LTC, provides the following: "Access to public information must be given if it is information directly related to the organization, the 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."

According to article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC):

"2. For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone number are purely identifying personal data and the addresses, postal an

professional contact, referring to staff in the service of public administrations, senior positions and managerial staff in the public sector of public administrations.

(...).”

Therefore, from the perspective of data protection regulations, there would also be no inconvenience for the claimant's access to the merely identifying data of her superiors, or those who have intervened in the decision-making relating to the day employment of the claimant, or of public employees - of the Consortium, of the Hospital or of the ICAM, if applicable -, which may appear in the information claimed in points 1 and 2, mentioned.

#### IV

- Request related to the "hostile incident" to which the claimant refers

The claimant, in the request addressed to the Consortium and in the subsequent claim to the GAIP, also requests information about a "hostile incident" which, according to her, would have occurred in the work environment. In summary, the claimant explains that she would have suffered a confrontation with a doctor at the Hospital, in relation to her work as a radiology technician at the Hospital. According to the claimant, she would have been reprimanded for not performing a medical test on a patient in a time slot in which, according to the claimant, there was no doctor responsible for performing or, where applicable, supervising the test. The claimant explains that she would have asked for a copy of the action protocol, the doctor responsible for protocolling the radiology studies, the date of the protocol and possible modifications.

In relation to this incident, the claimant explains that "I have not been informed of the actions taken, analysis, investigation for prevention on this hostile incident, nor a copy of the management register for prevention, which I am claiming (...)."

Initially, among the information requested there could be documents that do not contain personal data or that only contain personal data that merely identifies the people who have intervened in the approval of the documents. This would be the case, for example, of the Hospital's action protocols to manage incidents in the workplace, or similar documents that the claimant may request.

From the perspective of data protection regulations, and in accordance with article 24.1 LTC and 70.2 RLTC, to which we have already referred, there would be no obstacle to give the claimant access to this type of document.

Having said that, in the letter dated January 14, 2022, addressed to the claimant, the Consortium states that "There is no hostile incident of any kind in the procedure that the institution has established for this purpose and that you are also aware of . However, the management, protocolization and organization decisions of the service are the responsibility of the Director of your servi

From the Consortium's response, it seems that no specific procedure would have been opened in relation to the incident described, despite the verbal complaint made by the claimant, according to it. However, without prejudice to the fact that a specific file has not been formalized or opened by

the Hospital, based on the available information we cannot rule out that it has information about the management or organizational decisions taken in relation to the incident. In fact, in the Hospital's response, the claimant is addressed to the relevant Service Directorate, and it seems to indicate that this may indeed have information about the incident.

In the letter of December 15, addressed to the Hospital, the claimant explains that the incident would have affected the development of her work and the performance of a medical test on a patient. Specifically, the claimant states in her letter of December 15, 2015 that the incident was related to a medical test that had to be performed on a patient in a time slot in which, according to her, there was no doctor responsible for carrying out or recording said test.

In any case, for the purposes that concern us, we cannot rule out that the Hospital has the claimed information, moreover, taking into account that according to the information available, the incident could have affected the performance of a medical test on a patient, and that there are other workers to whom the information could be referred, for example the doctors with whom the claimant would have spoken, or the doctor responsible for supervising the test in question.

If the Hospital has information about said incident, it would be public information (art. 2.b) LTC). Therefore, it is necessary to analyze whether the claimant could have access, taking into account the provisions of articles 23 and 24 of the LTC, mentioned.

With regard to article 23 LTC, relating to access to certain categories of data including health data, it should be borne in mind that any health data of the claimant that the Hospital may have linked in some way to her work situation and to the incident described by herself, it would be information to which she should have access (ex. art. 15 GDPR).

Another thing would be that, in the information held by the Hospital related to said incident, there may be information deserving of special protection from third parties, given that it cannot be ruled out that the information claimed contains health data of persons other than the interested party, such as health data of the patient on whom the medical test was to be carried out. It should be pointed out that in the event that the patient's health data, contained in the claimed information, were only data already known to the claimant as a member of the healthcare team that attends to the patient, logically Article 23 LTC would not limit this access, which would be lawful in application of patient autonomy and data protection legislation.

Having said that, we also cannot rule out that there is health information of other people, specifically, of the doctor who would have had to perform or supervise the performance of the medical test (according to the claimant's opinion), in the event that the absence of said professional on the day of the incident due to a health problem of the doctor himself. In this case, it would be necessary to exclude this information from the claimant's access, in application of the provisions

Therefore, if there is information from third parties in the documentation related to the incident, subject to the provision of article 23 LTC, in the terms indicated, this information should be excluded from the requested access.



**Apart from the provisions of article 23 LTC, with regard to access to the rest of the information related to the incident, available to the Hospital, it will be necessary to apply article 24.2 LTC, cited.**

**As has been said, the right to know one's personal information (art. 15 RGPD), is a particularly relevant weighting element for the purposes of article 24.2 LTC.**

**With regard to the exercise of this very personal right of the claimant, there would be no inconvenience in giving her access to that information that refers solely to her person and that is contained in the documentation available to the Hospital (such as information from the Service Directorate responsible for the organization of the service in which the claimant works, to which the Hospital itself refers the claimant, in the letter of January 14, 2022-).**

**This would also include the right to know the identity of the people who provided information about the episode.**

**About this, as this Authority has done (among others, in Report IAI 54/2018, Report IAI 34/2020, IAI 9/2021, or IAI 50/2021, which can be consulted on the website [www.apdcat.cat](http://www.apdcat.cat)), based on article 15.1.g) RGPD, the claimant would have the right to know not only the direct information about him that the Hospital has in relation to the incident, but also the right to know the origin of this information, which entails knowing the identity of the people who have provided the Hospital with information about the claimant.**

**However, this could come into conflict with the right to data protection of the affected workers who have provided information. It cannot be ignored that, if the case arises, it would be people from the same work environment as the claimant, and that the disclosure of what they could have said or not said about her, in relation to her facts or behavior, could end affecting the work environment itself and the situation of these people.**

**For this reason, we remind you that it is necessary to grant the hearing procedure provided for in article 31 LTC to find out if there are personal circumstances or reasons that could justify the limitation of the claimant's right of access. It is worth saying, however, that in the case we are dealing with, there are no allegations of affected persons that could limit the right of access to the claimant's own information.**

**In any case, given the information available, from the perspective of data protection, the claimant should be able to access the information that the Hospital may have about her and in relation to the incident in question, in the terms noted and without it being appreciated, given the available information, the existence of any limit to the right of access recognized in article 15 RGPD, or any other circumstance that advises limiting the claimant's access to her data.**

**In addition, in accordance with article 18.2 of the LTC, the exercise of the right of access is not conditional on the concurrence of a personal interest, and does not remain subject to motivation or require the invocation of any rule. However, the fact that the applicant expresses what is the purpose he is pursuing and ultimately the reasons for which he is interested in knowing the information, may be relevant when considering and deciding on the prevalence between his right to 'access and the right to data protection of the affected persons (the professionals who would have accessed the medical history of the person making the claim).**

In fact, the purpose is one of the weighting criteria indicated by the LTC itself (article 24.2. b) LTC).

Point out, in this regard, that the right of access to public information can legitimately respond to particular interests. Regarding this, article 22.1 of the LTC, in demanding that the limits applied to the right of access to public information be proportional to the object and purpose of protection, mentions the taking into consideration, in the application of these limits, of "the circumstances of each specific case, especially the concurrence of a superior public or private interest that justifies access to the information."

For its part, the LT mentions taking into consideration the fact that the applicant justifies their request for information in the exercise of a right (article 15.3.b)).

Access to public information related to an incident such as the one described by the claimant could be relevant for the purposes of evaluating the management carried out by the Consortium in relation to the management of a labor conflict situation that would have affected the claimant. Knowing how an incident of this nature has been managed - or not - by the Consortium or the Hospital, in particular, can justify access to the information requested by the worker directly affected, taking into account the purpose of the transparency legislation (art. 1.2 LTC). The claimant should be able to compare and assess, through the information she claims, what management has been done of the labor incident that would have directly affected her, and what measures have been taken in this regard (for example, changes in action protocols, or in relation to the presence or supervision of certain professionals, of the

The information claimed could include other information provided by third parties (other Hospital workers, for example), not about the claimant herself (a matter to which we have already referred) but about the consequences that the described incident may have had have for these people.

Disclosing certain personal, family or work circumstances, etc., in this case, of hospital workers, could affect the privacy of these people in their work environment. This affectation would not be justified, since the knowledge of these circumstances does not seem to bring any benefit when it comes to complying with the purpose intended by the claimant, who requests access to information that may contribute to clarifying the management of an incident that directly affects it.

Therefore, given that this information (personal circumstances, work, etc., belonging to third parties other than the claimant), would not be relevant for the claimant, nor would it contribute to the fulfillment of the intended purpose, the sacrifice it would entail for the privacy of these people to make known these personal circumstances, is not justified.

Therefore, in the event that the information available about the "hostile incident" contains any information about the work or personal situation of other workers (for example, the doctor or doctors related to the performance of the medical test on a patient), it would be necessary to limit access to the explanations given by other workers about their own work or personal situation or from other people other than the claimant.

Finally, as has been pointed out, article 24.1 LTC would enable the claimant's access to merely identifying information of personnel or positions that may be included in the documentation that may have been drawn up at the Hospital (human resources service, area or department in which the claimant provides service...), referred to the incident in question. Thus, for example, access could be given to the name and position of the professional who signed a report, if applicable, on the incident and the claimant's employment situation.

v

-Request for information on access to the claimant's hospital medical history and HC3 (point 4)

According to the request of December 15, 2021, the claimant requests:

"copy of the entries in my shared history of the hospital for the last 13 years since that information was not provided to me, so I am asking again for all the entries in my history and my shared clinical history. Copy of the justification of workers who allegedly entered and did not justify it. Copy of the time they have been connected, which pages they have consulted, time of connection, person who collects the information. I request this information both on paper and digitally. (...) I have requested on the one hand entries to the hospital's clinical history and also entries to the shared clinical history, which are two different things. And the list of people who have consulted both and which documents have been downloaded or viewed."

The claimant adds, in her claim to the GAIP, dated January 17, 2022, that:

"I have requested all the accesses to the Hc3 shared history carried out from within the CSA Hospital (...) these accesses already specify in their response of January 14, 2022 that they are not given to me, justification entries, connection time, pages consulted, time of connection, person who collects the information, which documents have been consulted and downloaded both in Hc3 and in Clinical History (...)."

In the letter of January 24, 2022, the Hospital explains to the claimant that, in application of the LTC, she can exercise this right before the Department of Health. In other words, it leads the claimant to exercise this right before the head of the HC3, which is effectively the Department of Health.

Regarding this, with regard to HC3, the claimant only wants to know the traceability of the accesses that would have been carried out from the Hospital itself (from the Hospital's information systems and by its staff center).

From the perspective of transparency legislation, according to article 27.3 LTC: "3. Requests must be addressed to the entity or administrative body that has the information. If the request for information is addressed to a body that does not have it at its disposal or is addressed generically to an administration, what is established in article 30 is applicable."

For the relevant purposes, the Hospital would in principle have information on the accesses that occur to the HC3 from the center itself and by its professionals. So it seems

clear that it should be able to attend to the request made in relation to the HC3, in the same terms as it can attend to the request regarding the registration of access to the hospital clinical history.

In any case, it should be borne in mind that the considerations that will be made in this report regarding the possibility of providing information, based on transparency legislation, the traceability of access to the hospital clinical history and the HC3, are substantially matching

Thus, we start from the basis that the information available to the Hospital about access to the HC3 and the claimant's hospital clinical history is public information for the purposes of the LTC and is subject to the access regime provided for in this regulation (article 20 et seq.). Specifically, it will be necessary to apply the provisions of articles 23 and 24 of the LTC, in relation to access to the access register requested by the claimant.

With regard to the application of article 23 of the LTC, already mentioned, it should be borne in mind that although the medical history contains health data (art. 10 Law 21/2000, of 29 December, on information rights concerning the patient's health and autonomy, and clinical documentation), this is information relating to the claimant, owner of the clinical history. On the other hand, the information requested by the claimant does not include health data, since it would be limited to information about the people who have accessed their medical history.

Therefore, since Article 23 of the LTC would not apply to the information requested, Article 24 of the LTC will have to be taken into account.

The information on the traceability of accesses to the clinical history covers a set of information that goes beyond what can be understood as merely identifying data related to the organization, operation or public activity of the data controller (art. 24.1 LTC).

We refer, apart from the information on the identity and, where appropriate, the position, category or profile of the professionals of the Hospital who have accessed, to other information such as the date/time, connection time of the accesses, or, where applicable, the reason for access. Therefore, the provision of article 24.1 LTC does not apply in the case examined.

It has already been said that the right of access to one's own personal data (art. 15 RGPD) can be a weighting element to take into account.

The right of access to one's own information includes the right to know, among others, the recipients to whom this data has been communicated or is expected to be communicated (art. 15.1.c) RGPD). This would allow the claimant, owner of the clinical history, to know the identity of the recipients of the information who are not Hospital staff or someone in charge of its treatment.

On the other hand, in exercising this right, the claimant would not be able to access the accesses of people who are dependent on the Hospital. As this Authority has ruled (for example, in Opinion CNS 48/2021), access by the staff of a health center to the clinical history of a patient in that center is not information that is part of the right of access provided for in the data protection regulations.

Therefore, the exercise of the right of access to the claimant's own personal information would not count as an element of weighting for access to this other information, for the purposes of article 24.2 LTC.

Having said that, the purpose of the access must be taken into account (art. 24.2.b) LTC). As has been said, the transparency legislation does not require the requester of public information to motivate the request, although the purpose of the access, or the context of the request, may be relevant.

Thus, having information about the accesses that may have occurred to their health information, by the staff of the Hospital in which they also work, should allow the claimant, if applicable, to exercise some action or claim related to this improper access or the consequences this may have had for her interests and rights as an employee of the center itself.

It must be borne in mind that the clinical history responds to several uses, the main one being the provision of adequate assistance to the patient (art. 11 Law 21/2000). Thus, at the outset, any patient may have a legitimate interest in knowing which accesses have occurred to their clinical history for this purpose or another.

The patient autonomy legislation defines the patient's right to information in fairly broad terms (article 2 Law 21/2000 and art. 4 Law 41/2002), by establishing that the patient must be able to have all the information referring to the different aspects that have an impact on their treatment and therefore on their health. This broad right to information would include, among others, knowing which professionals are in charge and have intervened in the healthcare process, that is to say, knowing which professionals attend to a patient and, by extension, it can be considered that it would include knowing which professionals have accessed the clinical history to carry out or participate in this care, or to perform the functions provided for in the patient autonomy legislation (administrative functions, access by the inspection services of the quality of assistance, etc. ).

The patient autonomy legislation itself limits the terms in which certain professionals can access patients' clinical histories. Therefore, checking whether improper access has occurred would be part of the legitimate interest of the patient himself, as the owner of the medical record.

Not only that, but in the case examined there is the double circumstance that the claimant is the owner of the medical history (and, therefore, it may be that as a patient she must have information about the access to her information for a purpose of care provision), but she is also an employee of the Hospital and, in addition, reports a conflicting work situation.

Given the circumstances of the case, you may also want to check whether, for example, unauthorized access has occurred, related to or caused by the conflicting work situation you are reporting, by professionals at the center who would not be authorized to do so. For this reason, it may be relevant for the defense of the claimant's interests to know whether any improper access has occurred in these terms.

In addition, we remind you that data protection legislation imposes on the data controller the obligation to adopt the necessary technical and organizational measures to guarantee the security of the personal data processed, including protection against unauthorized or illegal processing lawful (arts. 5 and 24 RGPD).

Specifically in the area that concerns us, article 9.4 of Law 21/2000 provides the following:

**"4. Health centers must take appropriate technical and organizational measures to protect the personal data collected and prevent their accidental destruction or loss, as well as unauthorized access, alteration, communication or any other processing ."**

At the same time, the data protection regulations recognize the affected person the right to present a claim before, in this case, this Authority when it considers that there has been a breach or infringement of the data protection regulations that affects the processing of your personal data (art. 77 RGPD), as would be the case if there had been improper access to the data of your clinical work history. This, without prejudice to being able to take other legal actions that it deems appropriate.

In this context, it seems clear that, in order to take this or other legal actions for the defense of her rights and interests, the claimant must be able to access certain information about access to her medical history. In particular, he must be able to know which professionals have accessed his information, for what reasons and with what justification, in order to be able to corroborate or not the suspicions of improper access (for example, access by other workers with whom maintains a conflicting situation but which do not attend to the worker as a patient and who, therefore, would probably not be able to access it), and verify a possible irregularity with regard to the measures that the regulations require of the person in charge in relation to the management of the medical history of the claimant.

On the other hand, from the perspective of data protection, it is necessary to take into account the tenth additional provision of the LOPDGDD:

**"The responsible persons listed in article 77.1 of this organic law may communicate the personal data requested by subjects of private law when they have the consent of the affected or appreciate that the applicants have a legitimate interest that prevails over the rights and interests of those affected in accordance with the provisions of article 6.1 f) of Regulation (EU) 2016/679".**

In principle, the legal basis of article 6.1.f) RGPD does not apply when data processing is carried out for the fulfillment of a mission carried out in the public interest or in the exercise of public powers of the person in charge - as would be the case with the treatment of health data in the hospital field-. However, the tenth additional provision of the LOPDGDD provides for an authorization for communication based on the legitimate interest of third parties, in this case, the claimant himself.

In the case we are dealing with, this qualification would be based on the legitimate interest that generally needs to be recognized to the patient who is the holder of the clinical history - the claimant -, which is an element of weighting that would justify, in the terms indicated, from the perspective of data protection regulations, access to the log of accesses made to the clinical history itself,

to be able to check whether these accesses conform to the provisions of the studied legislation and check whether these accesses may have had an impact or relationship with the conflicting employment situation that the claimant is expressing.

On the other hand, it is necessary to analyze the possible impact that access to the requested public information could have on the rights of the affected persons (the Hospital professionals who have accessed the claimant's hospital clinical history, or the your HC3 information from the center itself, whose data may appear in the access register for traceability purposes).

The data of these professionals are personal data protected by the principles and guarantees of data protection regulations. The data of the professionals who access a patient's clinical history can be not only identifying or work data (identity, position, category or professional profile), but also information related to the access itself (date/time and, where applicable, duration of access, among others).

Workers (in this case, care professionals, or other profiles, of health services), can make a certain private use of computer resources or work tools, such as a mobile phone, a computer, etc., which 'company makes available to them for the development of the tasks and functions entrusted to them, in accordance with the use policies established by each company. Regarding this private use, in general terms, workers can have a certain expectation of privacy.

However, beyond that, it does not seem that a worker can have the same expectations when using these same tools to access information from a third party (the patient), which they should only access to fulfill certain tasks that may be assigned based on the applicable legislation.

To this it should be added that, according to article 5 of the RGPD:

"1. The personal data will be:

(...).

f) processed in such a way as to guarantee an adequate security of personal data, including protection against unauthorized or illegal processing and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

2. The person responsible for the treatment will be responsible for complying with the provisions of section 1 and able to demonstrate it ("proactive responsibility").

It should be borne in mind that, according to the patient autonomy legislation, any access to clinical histories must necessarily be managed, documented and supervised by the person in charge (art. 11 Law 21/2000). The traceability of access to clinical records is a necessary measure to ensure the protection of the information contained therein. Therefore, it does not seem that the expectation of privacy that the affected workers (Hospital professionals) could have in other areas of their professional activity is equally applicable when

these workers access and manage other people's information (not only the patient's own, but also other people's data, such as the patient's relatives or other professionals who care for him).

In short, if we take into account that the workers who may be affected by the claim submitted must have prior information about the correct use of clinical records and about the traceability of the accesses that occur, it does not seem that the expectation of privacy of these workers, when they access and manage other people's information (expectations that they may have in other areas of their professional activity), may be a determining counterweight in the aforementioned weighting.

Therefore, the right to data protection of the people who have accessed it would not justify denying the claimant access to the record of access to her own clinical history, in particular, knowing the identity of the professionals involved they have accessed from the Hospital where he also works.

In any case, the principle of data minimization (Article 5.1.c) RGPD) requires that access be limited to the data strictly necessary to achieve the intended purpose.

Knowing the identity and, if applicable, the position, category or profile of the professionals who access the clinical history and other data linked to the access (date and time, place, reason, etc.), would be provided, since it allows compliance with the purpose stated by the claimant to find out which people have accessed and consulted their information, and to verify, where appropriate, improper access by those they suspect. On the other hand, it would not be relevant to communicate other personal data, such as the ID number, contact details of these professionals or others that, in other words, the claimant does not request either.

Finally, it should be remembered that, according to article 31 of the LTC, if the request for public information may affect the rights or interests of third parties, identified or easily identifiable, they must be given a transfer of the request, so that they can make the allegations they consider appropriate, in those cases where they can be decisive for the meaning of the resolution.

Therefore, it will be necessary to grant the hearing procedure to the people affected in relation to the record of access to the claimant's medical history, so that they can make allegations and the concurrence of some additional circumstance that must be taken into account for the purposes of weighting. In any case, based on the information available, we note that the Hospital itself explains in its response to the claimant, dated January 14, 2022, that it would have complied with this procedure of Article 31 of the LTC.

All this, starting from the basis that, as has been said, the Hospital effectively has the information relating, specifically, to the HC3 access register. If this were not the case, taking into account the provisions of article 27.3 and 30.1 of the LTC, it could be necessary, if necessary, to refer the request for access to public information to the entity that effectively has of the information, in relation to access to the HC3 (Department of Health).



## **conclusion**

**With regard to the request for information relating to the working hours and calendar of the claimant (points 1 and 2), given that the information requested would refer solely to the working conditions of the claimant herself, the regulations of data protection does not prevent this access, nor access to the merely identifying data of the people in charge of establishing their work calendar, which may be included in the requested documentation.**

**With regard to the request relating to the "hostile incident" (point 3), the claimant has the right to access all the information about her person that appears in the documentation available to the Hospital and that is has generated as a result of the incident, including the origin of the information, that is, the identity of the people who provided it, unless the hearing process results in some circumstance that justifies the limitation of access. It would be necessary to exclude from access the health data of third parties that the claimant had not previously known due to their care functions. Nor would it be justified to access the rest of the information on third parties that may appear in the requested documentation and that is not relevant from the point of view of the impact that the incident may have on the claimant.**

**With regard to the request for information on access to the hospital clinical history and the claimant's HC3 (point 4), the data protection regulations do not prevent communicating to the claimant the information relating to access to his hospital medical history and the HC3 that would have been produced from the hospital, in the terms that have been set forth.**

**The data protection regulations do not prevent the claimant from accessing the action protocols she requests, nor to the merely identifying data of the professionals who have intervened in their approval.**

**Barcelona, April 1, 2022**