

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim for the lack of response by a public entity to the request for access to the 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 in relation to the lack of response by an entity public the request for access to the clinical history.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the report of the Legal Adviser, I issue the following report:

Background

1. On April 21, 2022, a person addresses a request to the entity in which he requests access to his medical history. On April 26, 2022, he reiterates his request, but specifies that the documentation he is interested in from his medical history is the one that affects the time period between 2004 and 2019.
2. On June 21, 2022, the applicant presents to the health center a letter of complaint in which he complains about not having received a response to his request, and asks for speed, given that he requires this documentation for issues judicial
3. On June 27, 2022, the health center responded to the applicant informing them that since 2014 the center has not had the medical records on paper and that the person in charge of their custody is a private entity. He informs in this letter that since his request arrangements have been made in order to be able to gather the requested documentation.
4. On July 13, 2022 and, subsequently, on different dates, the applicant submits new claims to the health center in which he complains about the delay in the response and, among other issues, insists on the terms of the your claim
5. On November 14, 2022, the applicant submits a claim to the GAIP in which he demands that the entity hand over his medical history.
6. On November 17, 2022, the health center responds to the applicant insisting on the terms of its response of June 27, 2022, and provides information regarding the private entity in charge of custody of the records clinics

As can be seen from the file sent, the health center attached with its response certain clinical documentation of the person making the claim.

7. On November 18, 2022, the GAIP forwards the claim presented on November 14, 2022 to the entity, and requests a report outlining the factual background and the basis for its position in relation to the claim, as well as the complete file and, if applicable, specifying the third parties affected by the requested access.

8. On December 7, 2022, the entity sent GAIP a statement of objections in which it concluded the following:

"[...]considers that it is appropriate for the GAIP to reject the claim made by Mr. [...] because it has been addressed to an administrative body that does not have the legally attributed competence to resolve it, without corresponding, for this reason, carry out any other assessment in relation to the merits of the claim raised, as it would not be part of the competences attributed to the Information Units in accordance with articles 3, 78 and 79 of Decree 8/2021."

In short, the entity defends that the claim is, in reality, a request to exercise the right of access provided for in the data protection regulations, on which the Catalan Authority is competent to resolve of Data Protection.

On December 12, 2022, the entity sends the GAIP the administrative file relating to the claim filed.

9. On January 4, 2023, the GAIP requests a report from 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 government

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 complaints against resolutions regarding 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, 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 .

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

The data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, apply to the treatments that are carried out on any information " *on 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 "*.

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 processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of 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 "*.

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 can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

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* .

Public access to 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 (hereinafter, 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 his 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).

In the case we are dealing with in which access to the medical history is requested , this information must be considered public for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC), being documentation drawn up by the Administration and which it has in its possession as a result of its activity or exercise of its functions.

It must be noted, however, that this right of access is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case with the limits of articles 23 and 24 of the LTC regarding personal data.

III

The object of the claim presented to the GAIP is access to the claimant's own medical history, with regard to documentation purchased between 2004 and 2019.

The analysis must be based on the provisions of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation, which provides that the the patient is the owner of the right to information regarding his care process (art. 2 and 3).

In accordance with what is provided for in article 9.1 of Law 21/2000 "*the medical history collects the set of documents relating to the healthcare process of each patient while identifying the doctors and other healthcare professionals who have intervened*", and it constitutes "[...] *an instrument primarily intended to help guarantee adequate assistance to the patient*" (article 11.1 of Law 21/2000).

Regarding its content, article 10 of Law 21/2000 provides that the clinical history must include, 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 the 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 applicable.

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.

3. Health centers must have a standardized clinical history model that includes the contents set out in this article adapted to the level of care they have and the type of service they provide."

From the point of view of the transparency regulations, the first additional provision establishes in the second section that "access to public information in subjects that have established a special access regime is regulated by their specific regulations and, with supplementary character, by this law".

For this purpose, taking into account the object of the claim presented - access to the own medical history - it is necessary to take into account the provisions of article 13 of Law 21/2000, relating to the right of access in the medical history:

"[...] 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".

From the perspective of transparency regulations, 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 by in accordance with the personal data protection regulations.

In accordance with this, the regime applicable to the claimant's request for access to certain documentation contained in his medical history must be applied in accordance with the provisions of article 15 of the 'RGPD regarding the right of access of the holder of 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 profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

2. [...]

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

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

On the basis of the regulations that have been analyzed and, in particular, what is established in article 24.3 of the LTC, the processing of the request for access to the clinical history and also the claim against the denial or the partial denial of this information, or the lack of response, or any breach of the data protection regulations, must be processed through the RGPD regime, which establishes in its article 77.1 that without prejudice of any other administrative recourse or judicial action, any person who considers that the data controller has infringed the GDPR has the right to submit a claim to the supervisory authority.

In accordance with article 5.b of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the Catalan Data Protection Authority is competent to "*solve the protection claims made by the affected persons regarding the exercise of rights, rectification, cancellation and opposition*".

Article 116.a) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations establishes that it is grounds for inadmissibility "*The administrative body is incompetent, when the competent one belongs to another Public Administration. The appeal must be sent to the competent body, in accordance with what is established in article 14.1 of the Public Sector Legal Regime Law*".

Consequently, for all of this, it is considered that the claim filed must be rejected by the GAIP, given that the Catalan Data Protection Authority is the competent authority to hear claims, among others, in relation to the right of access provided for in article 15 of the RGPD.

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.

Barcelona, January 31, 2023