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Autoritat Catalana de Protecció de Dades

Carrer Rosselló, 214, Esc. A, 1r 1a
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RESOLUTION of the rights protection procedure no. PT 21/2018, urged against the Fundació Hospital Evangèlic de Barcelona

Background

1.- On 04/19/2018 it was registered with the Catalan Data Protection Authority a letter from Mr. (...) (hereinafter, the claimant), for which he formulated a claim for the alleged disregard of the right of access to the medical history of his deceased mother, Mrs. (...)(...), a right he had previously exercised before the New Evangelical Hospital in Barcelona. The claimant provided various documentation relating to the exercise of this right.

2.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on data protection of personal nature (hereafter, RLOPD and LOPD, respectively), by means of official document dated 05/02/2018 the claim was transferred to the Fundació Hospital Evangèlic de Barcelona (hereafter, the Foundation)

so that within 15 days he formulated the allegations he considered pertinent.
In the same letter he was informed that on 05/1/2018 the person making the claim had sent an email to the Authority stating that on 04/27/2018 he had appeared before the Evangelical Hospital, at the request of this one, in order to collect the documentation corresponding to the medical history of his deceased mother, and that among the documentation delivered, mandatory information from the medical history, such as the results of analyses, was missing. And he was also asked to provide, among others, a copy of the medical history of the deceased mother, as well as a copy of the documentation given to the person here claiming.

3.- On 05/25/2018, the Authority received the Foundation's letter in which it made allegations against the transfer, accompanied by various documentation. In the letter of allegations, he pointed out the following: "(...) FIRST.- The mother of Mr. (...), 91 years old, entered our center, in the Subacute Unit, on January 9, 2018, as a referral from the Sant Pau Hospital Emergency Department, where she was treated until March 29 this year, which unfortunately was successful.

On March 29, 2018, the son of Mrs. (...), Mr. (...), presents a claim and requests that an investigation be opened, in addition to the patient's clinical documentation.

On April 4, 2018 Mr. (...) submits a new letter recounting the situation experienced under his opinion, the day before, when he went to the center to collect the death certificate of his mother that he had requested, requesting that corrective measures be applied .
On the part of our center, the actions of ascertaining the facts and collecting them begin

of information, both documentary and from the testimonies of the plant's workers, nursing staff who were providing services on March 29, the plant's doctor and the Nursing Coordination Managers.

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SECOND.- Once the complete information has been obtained, on April 19 , 2018, Mr. (...) so that he can collect the requested documentation, together with the response communication from us, obtaining as a response that will come soon.
After a few days without appearing, he was notified by phone on two more occasions, on April 23 and 24 , reiterating that he could come to the center to collect the information and clarify the unfortunate situation. His answer continues to be that he will come when Ii is well (...). They try to explain to him that the procedure to process the claims is estimated to take 15 days in order to obtain a complete collection of the history and antecedents of the facts.
On April 27 , 2018, a burofax was sent to record the attention to his claim, and on May 2, Mr. (...) at the center, where the requested documentation is delivered.
On May 14 Mr. (...) he sends us a burofax again to obtain an answer about the actions that have been carried out in relation to the nursing staff who intervened in the events, and then he also answers by burofax, remembering that he has the copies of the analyzes at your disposal, so as not to record the same with the initial clinical history .
The analytics were not attached initially to understand that the information was collected during the clinical course, but when requested they are made available to the applicant(...)."

The Foundation has not provided a copy of all the documentation that would appear in the medical history of the claimant's mother, but only of the documentation that it would have given to the person here claiming, which includes the log of access to the medical history mentioned.

4.- In view of the Foundation's response, and in order to clarify the reason for the claimant's disagreement, by official letter dated 10/01/2018 the Authority requested the claimant to specify the documents in his mother's medical history in respect of which he had requested access, and he considered that the Foundation had not provided them.

5.- On 08/10/2018, a letter from the person claiming was entered in the Authority's Registry, in response to the Authority's request for information, through which he highlighted, among others issues, the following:

- Regarding the request for access and a copy of the analytical tests carried out on his mother: he stated that, although the request for the entire clinical history had been made on 04/04/2018 , it had not been until 06/21/2018, and after reiterating his request, that the foundation would have delivered them.

- With regard to the documentation of his mother's medical history which, according to the person making the claim, the Foundation had not yet given him, he noted the following:

  • Medicine and nursing progress sheets, graph of constants.

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- Copy of the constant sheets.
- Evolutionary notes of medicine and nursing.
- Medical orders.
- Complementary scan reports.
- The evolution and planning of nursing care.

- Finally, the claimant provided a copy of two proofs of delivery of documentation, issued by the Department of Documentation and Archives of the Foundation and signed by a user of the Foundation and the person claiming here, in which the delivery of the following documentation to the person claiming here was indicated:

  - The proof of delivery dated 21/06/2018 indicated the delivery of the analytical tests carried out to the mother of the person reporting on 10/01/2018, 18/01/2018, 19/01/2018, 24/01/2018, 06/02/2018, 14/02/2018, 21/02/2018, 02/03/2018 and 20/03/2018.

  - The proof of delivery dated 02/05/2018 indicated the delivery of the Sant Pau Hospital emergency discharge report, the epicrisis report, the general data protection consent, the clinical history and the audit of access to the clinical history.

  This receipt contained the following annotation by the person making the claim: "the signature certifying receipt does not imply compliance, as this requires prior review of the documentation received."

Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1 , of the Catalan Data Protection Authority.

2.- In relation to the regulations applicable at the time of the facts, article 15 of the LOPD, in relation to the right of access, determines the following:

> "1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.
> 2. The information can be obtained through the mere consultation of the data through visualization, or the indication of the data that is the subject of treatment through writing, copying, telecopy or photocopy, certified or not, in a legible and intelligible form legible, without using keys or codes that require the use of specific mechanical devices.
> 3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."

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For its part, article 27 of the RLOPD, in its first and second sections, provides the following regarding the right of access:

> "1. The right of access is the right of the affected person to obtain information on whether their own personal data is being processed, the purpose of the processing that, if applicable, is being carried out, as well as the information available on the origin of the aforementioned data and the communications made or planned for this data.
> 2. By virtue of the right of access, the affected person can obtain from the controller information relating to specific data, to data included in a certain file, or to all their data subjected to processing.
> However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

Likewise, also on the right of access, article 29 of the RLOPD establishes the following:

> "1. The person in charge of the file must decide on the access request within a maximum period of one month from the receipt of the request.
> After the deadline has passed without an express response to the access request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.
> In the event that it does not have the personal data of those affected, it must also notify them within the same period.
> 2. If the request is approved and the person in charge does not accompany his communication with the information referred to in article 27.1, access must take effect within ten days of the aforementioned communication.
> 3. The information provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.
>
> The information must include all the basic data of the affected person, the results of any computer processing or process, as well as the information available on the origin of the data, the transferees of the data and the specification of the specific uses and purposes for which the data was stored."

Apart from the previous regulation, in the case analyzed here, it is also necessary to take into account the applicable health regulations. Specifically, Basic State Law 41/2002, of November 14, on Patient Autonomy (hereinafter, Law 41/2002) establishes in its article 18 the right of access to the clinical history in the following terms:

> "Rights of access to the clinical
> history 1. The patient has the right of access, with the reservations indicated in section 3 of this article, to the documentation of the clinical history and to obtain a copy of the data contained therein . Health centers must regulate the procedure that guarantees the observance of these rights.

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2. The patient's right of access to the clinical history can also be exercised by duly accredited representation."
3. The patient's right of access to the clinical history documentation cannot be exercised to the detriment of the right of third parties to the confidentiality of the data contained therein collected in the patient's therapeutic interest, nor to the detriment of the right of professionals who participate in its preparation, who can object to the right of access to the reservation of their subjective annotations.

4. Health centers and private practitioners must only provide access to the medical records of deceased patients to people who are related to them, for family or de facto reasons, unless the deceased has expressly prohibited it and be accredited in this way. In any case, a third party's access to the medical history motivated by a risk to their health must be limited to the relevant data. Information that affects the privacy of the deceased or the subjective notes of professionals must not be provided, nor that harms third parties."

Regarding the content of the clinical history, art. 15 of this legal body establishes the following:

"1. The medical history must incorporate the information that is considered important for truthful and up-to-date knowledge of the patient's state of health. Any patient or user has the right to record, in writing or in the most appropriate technical support, the information obtained in all their care processes, carried out by the health service both in the field of primary care and specialized care.

2. The main purpose of the medical history is to facilitate health care, recording all the data that, under medical criteria, allow truthful and up-to-date knowledge of the state of health. The minimum content of the clinical history must be the following:

a) The documentation relating to the clinical statistics sheet.
b) Entry authorization.
c) The emergency report.
d) History and physical examination.
e) Evolution.
f) Medical orders.
g) The interconsultation sheet.
h) The reports of complementary explorations.
i) Informed consent.
j) The anesthesia report.
k) The operating room or birth registration report.
l) The pathological anatomy report.
m) The evolution and planning of nursing care.
n) The therapeutic application of nursing.
ñ) The graph of constants.
o) The clinical discharge report.

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Paragraphs b), c), i), j), k), l), ñ) io) are only required in the formalization of the clinical history when it is about hospitalization processes or it is arranged in this way. "

For its part, article 13 of Catalan Law 21/2000, of December 29, of Patient Autonomy and Rights to Information and Clinical Documentation (hereinafter, Law 21/2000) determines the following:

"Rights of access to the clinical history

1. With the reservations noted 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."

Regarding the content of the clinical history, art. 10 of Law 21/2000 establishes 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 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."

Finally, article 18 of the LOPD, regarding the protection of rights of access, rectification, opposition and cancellation, establishes in its sections 1 and 2 the following:

"1. Actions contrary to the provisions of this Law may be the subject of a claim by the interested parties before the Data Protection Agency, in the manner determined by regulation.
2. The interested party who is denied, in whole or in part, the exercise of the rights of opposition, access, rectification or cancellation, may bring this to the attention of the Data Protection Agency or, where applicable , of the competent body of each autonomous community, which must make sure of the validity or inadmissibility of the refusal."

In line with the above, article 16.1 of Law 32/2010 provides:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

3.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the Foundation resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for the complaint of the person

that initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 04/04/2018 a letter was entered in the Register of the New Evangelical Hospital by the person here claiming, through which he exercised the right of access to the medical history of his deceased mother.

In accordance with article 29 of the RLOPD, the Foundation had to resolve and notify the access request within a maximum period of one month from the date of receipt of the request.

It is worth saying that the person making the claim presented the letter of claim to the Authority before this period of one more expired, and therefore prematurely, which should lead to the claim not being accepted. However, given that, once the claimant has received the Foundation's response to his access request, he is dissatisfied considering that the documentation provided is incomplete, for reasons of procedural economy it is considered appropriate the processing of said claim.

In relation to the issue of the one-month period mentioned above, it should be noted that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of the public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, LRJPCat), of a on the other hand, the calculation of the maximum term in procedures initiated at the instance of a party - as is the case - starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least have occurred the duly accredited notification attempt (art. 40.4 LPAC).

Well, the Foundation has certified before the Authority that it responded to the request for access made by the now claimant by means of a letter dated 04/19/2018, accompanied by various documentation of his medical history mother, which was notified to him on 02/05/2018, through hand delivery of the aforementioned letter and documentation. Previous attempts to notify and deliver the documentation prior to this date are irrelevant, since the Foundation has proven to have responded before the end of the legally provided term.

As a result, the claim regarding the lack of response to the request to exercise the right of access is dismissed, since the Foundation resolved and notified in the form and time limit of said request submitted on person here claiming.
This notwithstanding what will be said below regarding the substance of the claim.

4.- Once the above has been established, it is appropriate to analyze the merits of the claim, that is to say, whether the documentation delivered by the Foundation to the person now making the claim conformed to the precepts transcribed in the previous legal basis, or on the contrary is incomplete, as the person claiming here asserts.

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As a starting point, it should be borne in mind that articles 15 of the LOPD and 27.1 of the RLOPD configure the right of access as the right of the affected person to obtain information about their own personal data that is being processed and, if applicable, on the purpose of the treatment, as well as the information available on the origin of the aforementioned data and the communications made or planned. The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of cancellation, rectification or opposition. This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed.

Without prejudice to the foregoing, in the present case the right of access to the medical history was exercised by the son of the person holding the data, once this person had caused success. The art. 18 of Law 41/2002 recognizes as a singular case in section 3 the right of access to the clinical history of "deceased patients to the people who are linked to them, for family or de facto reasons, unless the deceased has expressly prohibited and is accredited in this way (...)", the latter issue on which the Foundation has not made any statement, and for this reason from the outset it is necessary to recognize the right of the person now claiming to access the medical history of his late mother. Following the same section 3, it is pointed out that this right of access is limited when such access may affect the privacy of the deceased person, or the professionals who had assisted them - if they have made subjective notes whose confidentiality want to preserve-, or it may harm third parties. In this regard, the Foundation has not made any statement either, and therefore a priori it is necessary to start from the recognition of the right of the person claiming here to access the entire content of his deceased mother's medical history.

Regarding the documentation given to the person making the claim, it is proven in the procedure that the Foundation gave him the following documentation:

- Emergency report issued on 08/01/2018 at the Hospital de la Santa Creu i Sant peace
- Epicrisis report issued on 04/17/2018 at the New Evangelical Hospital by the doctor responsible for the patient.
- General informed consent form.
- Clinical course sheets.
- List of accesses to the clinical history.
- Results of various blood and urine analyzes carried out during admission hospital

On the contrary, it is not proven in the procedure that the Foundation had given the person claiming here the following documentation and that this person claims:

1. Medicine and nursing evolution sheets, graph of constants.

2. Copy of the constant sheets.
3. Evolutionary notes of medicine and nursing.
4. Medical orders.
5. The reports of complementary explorations.
6. The evolution and planning of nursing care.

This numbered documentation (1 to 6) corresponds to the documentation that, according to the precepts of the health regulations mentioned in the second legal basis, must form part of the clinical history. Specifically, and following the numbering order indicated, they correspond to the precept and the following sections: art. 15.2.e), m) and ñ) Law 41/2002 (1); art. 15.2.ñ) Law 41/2002 (2); art. 15.2.e) im) Law 41/2002 (3); art. 15.2.f) Law 41/2002 (4): art. 15.2.h) Law 41/2002 (5); art. 15.2.m) Law 41/2002 (6).

Given that article 15 of Law 41/2002 regulates the minimum content of a medical history and is mandatory, it is assumed that the controversial clinical history of the New Evangelical Hospital would contain at least the documents indicated by this precept, among which, as noted, are those mentioned by the claimant in his last letter submitted to this Authority on 8/10/2018.

As things stand, it is presumed that the Foundation has the documentation indicated (1 to 6) -unless it expressly certifies otherwise-, and it still would not have delivered it to the claimant here.

And with respect to this consideration, it is worth saying that the Foundation's receipt dated 02/05/2018 of delivery of documentation to the claimant, in which "the clinical history" appears as the delivered documentation, is not sufficient for understand that the right of access to the medical history object of the claim has been fulfilled, since the reason for the complainant's dissatisfaction lies, not in the fact that he had not been given a copy of his mother's medical history, but in the considering that the documentation provided was incomplete. In addition, the same claimant noted in the same proof of delivery that his signature did not imply his compliance with what was indicated in said proof. And proof of his non-conformity is the letter presented to the Authority on 08/10/2018, in which he specifies the documents that the Foundation had not yet delivered to him, without this Authority having any element that questions this statement .

That is why, in accordance with the applicable regulations, it is necessary to recognize the claimant's right to also access this other documentation that would appear in the medical history of his deceased mother (the one numbered above in this foundation with the numbers from 1 to 6). As it has been pointed out before, only that information is excluded from the material scope of the right of access, the access to which - by the person making the claim here - could harm the right of third parties to the confidentiality of your data, or the right of the professionals who intervened in its preparation, who can invoke the reservation of their observations, appreciations or subjective annotations. But in such cases, the denial of access must be motivated in writing, and in the case of reservations made by professionals, it is also necessary for these professionals to leave written evidence of their reservation.

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Finally, in the event that the Foundation could not deliver any of the documents indicated above due to the fact that they are not included in the medical history - despite being mandatory information -, the person making the claim should be informed of this.

In accordance with the above, the right of access exercised by the claimant should be partially assessed, since the documentation provided is presumed to be incomplete.

5.- In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the manager of the file must be required so that in the period of 10 days makes the exercise of the right effective. In accordance with this, it is necessary to request the Foundation so that within 10 counting days from the day after the notification of this resolution, provide the person making the claim with the documentation of the medical history of their deceased mother which has not yet been delivered to him, in accordance with what was indicated in the previous legal basis; and in your case, indicate here the document or documents that cannot be delivered because they are not in your files. Once the right of access has been made effective in the terms set out, within the same period of 10 days the claimed entity must report to the Authority.

For all that has been exposed,

RESOLVED

First.- Partially estimate the guardianship claim made by Mr. (...) and (...) against Barcelona Evangelical Hospital Foundation.

Second.- Request the Fundació Hospital Evangèlic de Barcelona so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of access exercised by the person making the claim, in the manner indicated to the fourth and fifth fundamentals of law. Once the right of access has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

Third.- Notify this resolution to the Fundació Hospital Evangèlic de Barcelona and the person making the claim.

Fourth.- Order the publication of the Resolution on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or to directly file an administrative appeal before the courts

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administrative disputes of Barcelona, within two months from the day after their notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating contentious jurisdiction administrative

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)