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## File identification

Resolution of the rights protection procedure no. PT 21/2019, urged against the Catalan Institute of Health and Management of Health Services.

## Background

1.- On 10/05/2019, the Catalan Data Protection Authority received a claim made by Mr (...)(...) (hereinafter, claimant) against the Department of Health of the Administration of the Generalitat, due to the alleged disregard of the request it presented to this Department, in exercise of the right of access provided for in article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof. On 06/14/2019, the Spanish Data Protection Agency (hereinafter, AEPD) sent the same letter of complaint.

In the letter of claim, the claimant stated his complaint for not having received a response to the request for access to information regarding the identity of the people who had accessed his medical history (hereinafter, HC). Among the documentation he provided was the following:

- The request for access that gives rise to the present procedure, which was received by the Department of Health on 1/02/2019, through which it requested information on the identity of the people who had accessed in your HC through the E-CAP and SAP-ARGOS Assistance applications. In this request he also asked for a copy of his HC, as well as information about the purposes of the treatment, the categories of data processed and the recipients or categories of recipients of his data.
- A letter that the claimant sent to CatSalut on 02/19/2019 in response to the response he would have received from the public body on 02/12/2019, through which letter clarified that their access request also referred to the identity of the people who had accessed their HC through the SAP-ARGOS application, from the following hospitals: Arnau de Vilanova University Hospital, from Lleida, the Hospital Comarcal del Pallars, the University Hospital Santa Maria, in Lleida, and the Hospital Fundació Sant Hospital de la Seu d'Urgell.
- An office dated 03/25/2019 from CatSalut, which stated the following:

*"In relation to your request dated February 12, 2019, we inform you that:*

*We have proceeded to request from the different entities the traceability you are asking us for. As we may have delays, we inform you that we have proceeded with the extraction*

*of traceability from the Shared Clinical History of Catalonia, pending those carried out by the entities.*

*Also today we make a reminder to perform the traceability extraction.*

*Attached is the HCC traceability. (...)"*

- The doc. no. 8 would correspond to the "HCC traceability" that CatSalut would have sent to the claimant together with the office dated 03/25/2019. There are three records in the list, which seem to correspond to an access made on 01/09/2018 from CAP Salou to the information regarding the clinical course and a summary of the Shared Clinical History of Catalonia (hereafter, HC3).

2.- By official letter dated 05/22/2019, the Authority transferred the claim to the health data protection delegate (hereafter, DPD de Salut), to be the one appointed by all the entities claimed -except for one referred to later-, in order to respond within one more period, following the procedure provided for in article 37.2 of Organic Law 3/2018, of December 5, of Personal Data Protection and guarantee of digital rights (hereinafter, LOPDGDD).

3.- On 06/27/2019 the DPD Health received a response, through which they provided an excel document with the corresponding traceability of the accesses to the HC of the claimant carried out from the Arnau Hospital of Vilanova de Lleida, and a document dated 03/04/2019 from the Territorial Management of Lleida of the Catalan Institute of Health (hereafter, ICS), in which it is pointed out, among others, that: *"all the accesses have been carried out with an assistance purpose and which, therefore, are justified"*.

4.- Once the documentation sent by the DPD for Health has been analysed, the Authority considers it appropriate to process the guardianship procedure, and proceed to the hearing procedure. In accordance with article 5.b) of Law 32/2010, of October 1, of the Authority, by means of an official dated 07/01/2019, the Authority granted the Department of Health a period of 15 days for him to formulate the allegations he considered pertinent.

5.- On 05/08/2019, the Authority received a letter from the DPD for Health, which highlighted, among others, the following:

*"A. Due to an error in extracting the traceability, the ICS has informed us that the Excel file last 06/27/2019 does not correspond to the accesses of the person concerned.*

*B. The interested party has at their disposal through the La Meva Salut viewer – <https://lamevasalut.gencat.cat>, access to the information it refers to as provided in article 13.2 of the LOPDGDD.*

*C. Due to the special configuration of the case, including several entities in the same letter, this Office has initiated the procedures to obtain the corresponding information and send the information in an organized manner.*

*1. On 03/07/2019, the DPD Health Office transferred the claim to the Data Protection Coordinator of the ICS to compile the information and draft the corresponding response.*

*On 07/29/2019, the ICS Data Protection Coordinator partially provided the required documentation and a second request was issued by this Office. On August 5, 2019, the ICS responded to this second request.*

*Attached:*

- Annex 1, copy of the reference traceability of the interested person related to ECAP*
- Annex 2, copy of the reference traceability of the interested person related to SAP ARGOS– ARNAU de VILANOVA*

*At the same time, considering that the information sent by the ICS did not incorporate the dependent centers of Gestió Serveis Sanitaris ("GSS") (ie Hospital Comarcal del Pallars and Hospital Universitari de Santa Maria, in Lleida), despite making use of the SAP-ARGOS program, this Office on August 5, 2019 requested the GSS Data Coordinator to send the information to the Office and to be able to send the complete documentation of those entities that are members of the DPD of Health*

*2. It is not known as of today that any information has been sent to the citizen, given that it has not yet been properly compiled.*

*3. See attached documents as Annexes 1 and 2 indicated above.*

*4. The entity Hospital Fundació Sant Hospital de la Seu d'Urgell has not designated the TICSALUT Foundation as data protection delegate.*

*otherwise Taking into account the special configuration of this case, where several entities were incorporated in the same procedure to be unequivocally managed by this Office for all those affiliated entities, we request from this Authority an extension of the term to compile the information and notify the citizen with the documentation relating to their right of access, bearing in mind that the documentation is currently available to them through the La Meva Salut viewer."*

*6.- On 21/08/2019 a new letter was received from the DPD de Salut, through which it provided as annex 1 a list corresponding to the "traceability" referred to the use of the SAP-ARGOS application by from the Pallars Regional Hospital and the Santa Maria University Hospital, in Lleida.*

*7.- On 8/10/2019 the person making the claim submitted a new letter to the Authority, through which he highlighted the following:*

*"As stated in the same resolution of the Health Data Protection Delegate - which I am attaching - the legal response deadlines have not been respected by either of the two entities.*

*2.- Nor are the deadlines for which information was requested respected, which were:*

*from 2012 to January 2019. 3.- I have not been provided with any information regarding the Hospital de la Seu d'Urgell. 4. It is absolutely false that all access to my Clinical History has been justified. 5. Regarding the information collected in the documents provided by GSS: a) The only attentions I have required from the Santa Maria University Hospital are: Two visits by Dr. (...)(...), a visit from Dr. (...)(...) -(...)(...)- and the practice of (...) by Dr. (...) (...). I don't know what the other accesses are responding to. b) The care I have received at the Hospital (...) can be 4-5 visits to the Service (...)(...), 3-4 visits by Dr. (...)(...) and the practice of a test (...)(...). I don't know what the other accesses are responding to. 6.-*

*Regarding the information collected in the documents provided by the ICS: a) I have never been a*

*the ABS of Cap Pont and, therefore, I have never required any assistance from it, either elective, nursing, administrative services, or any other. b) I have never been to the Guissona Medical Office, therefore, I have never required assistance from it, neither medical, nursing, administrative services, nor any other. c) I have never required assistance from the ABS of Tremp, either elective or nursing, nor administrative services, nor any other. d) I have never been to the CAP (...) and, therefore, I have never required assistance from it, neither elective, nor nursing, nor administrative services, nor any other. e) I have never been to Alpicat's Local Clinic and, therefore, I have never required assistance from it, neither medical, nursing, nor services administrative, nor any other. f) I have never been to the CUAP in Lleida and, therefore, I have never required assistance from it, neither elective, nor nursing, nor administrative services, nor any other. g) I have never required assistance from the CAP (...), neither optional, nor nursing, nor administrative services, nor any other. h) They contain 4 accesses from January 21, 2019 without registration from where they were made. i) (...), ceased to be my assigned CAP since at least 09 May 2017. I do not understand why accesses to my medical history with subsequent data are coming out. j) The records contain acronyms that I do not know what they mean. The Law clearly observes that the data provided must be legible and understandable by the applicant. k) Despite knowing that the Law allows the non-disclosure of the data of the professionals who have accessed the clinical history, it would be good to know, at least, from which medical, nursing, administrative or any other services, you have made the access. Otherwise, this applicant cannot know whether the accesses have been legitimate and/or authorized."*

8.- On 9/10/2019 the person making the claim submitted a final letter to the Authority, through which he highlighted the following:

*"(...)1.- It is necessary to specify the scope of my initial claim, which did not only refer to access to my clinical history, but also to the rest of the information to which refers to my writing, such as: request for a copy of my medical history and other data and information related to Article 15 of the RGPD. 2.- I withdraw the part of the claim that refers to the Fundació Sant Hospital de la Seu d'Urgell (...)."*

Together with this last letter, I provided a copy of the resolution of 09/09/2019 of the office of the Health Data Protection Delegate, by which the claim made by the claimant is partially upheld, and his right of access to the information mentioned in the third-party legal basis of the resolution, in which the following is noted:

*"Antecedents*

*(...)*

*Fourth.- The Office of the Delegate of Health Data Protection has transferred to the Data Controllers -Catalan Health Institute (ICS) and Health Services Management (GSS), so that they can provide the documentation or carry out the legations that they consider appropriate in order to respond to the reference claim.*

*Fifth.- On 07/09/2019 and 08/21/2019 respectively, the Office of the Health Data Protection Delegate received the documentation relating to the access register where it was found, according to the Respective managers, that all access both from the e-Cap computer system and from the SAP ARGOS Assistance application have been justified.*

*(...)  
Legal Foundations*

*(...)  
3. In relation to the claim of the interested person, it should be borne in mind that Law 21/2000, as well as Basic Law 41/2002, regulate a patient's right to information that can be considered broad, since it refers to everything that affects the patient's health, and everything related to the treatment received by him. Law 21/2000 aims to determine the patient's right to information concerning their own health and their autonomy of decision (art.1.a) Law 21/2000. The same law adds, in relation to the scope of the right to assistance information, that "the information must be part of all assistance actions, must be truthful, and must be given in a way*

*understandable and appropriate" to the requirements of each patient (art. 2.2 Law 21/2000).*

*From the point of view of the principle of transparency, once the person concerned knows the identity of the person in charge (and the identity of any of the assignees of the information) they already have elements to know the scope of the persons or categories of persons who may have knowledge of your information. It is therefore not necessary to identify each of the employees of the person in charge of the treatment or of the transferee entity.*

*Although, as has been explained, providing information related to the accesses of the center's own staff to the HC, when the affected party so requests, can be an exercise in transparency, which would be protected by legislation of the patient's autonomy, and which can have the positive effect of conveying to the affected a greater degree of confidence in the center's good practice, with respect to the treatment it has carried out of the data of the HC.*

*In conclusion, the right of access (art. 15 RGPD) does not include the obligation, for the Responsible for communicating the identity of specific people who, as staff of the entity responsible for the treatment, may have had access to the holder's personal data.*

*In these terms, the claim must be understood as partially appreciated."*

#### 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 applicable regulations, article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons



with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD) determines the following:

- "1. The interested party has the right to obtain from the controller confirmation of whether personal data affecting him is being processed, and if so, he has the right to access this 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 have been communicated or will be communicated, in particular recipients in third countries or in international organizations.*
  - d) The planned retention period for personal data. If this is not possible, the criteria used to determine this term.*
  - e) The right to request from the person in charge of the treatment access to the personal data relating to the interested party, to rectify or delete them, to limit the treatment or to oppose it, as well as the right to data portability.*
  - f) The right to present a claim before a control authority.*
  - g) When the personal data has not been obtained from the interested party, any available information about its origin.*
  - h) The existence of automated decisions, including the elaboration of profiles, referred to in article 22, sections 1 and 4, and at least in these cases, it must provide significant information about the logic applied as well as the importance and expected consequences of this treatment for the interested party.*
- 2. When personal data is transferred to a third country or an international organization, the interested party has the right to be informed of the appropriate guarantees relating to the transfer, pursuant to the provisions of article 46.*
- 3. The controller must provide a copy of the personal data subject to processing. For any other copy requested by the interested party, the controller has the right to charge a reasonable fee based on administrative costs.*
- When the interested party submits the request by electronic means, and unless the latter requests that it be done in another way, the information must be provided in a commonly used electronic format.*
- 4. The right to obtain a copy mentioned in section 3 does not negatively affect the rights and freedoms of others."*

Also, on the rights contemplated in articles 15 to 22 of the RGPD, article 12, apparatus 3, 4 and 5 of the RGPD establishes the following:

- "3. The person responsible for the treatment must provide the interested party with information related to their actions, if the request has been made in accordance with articles 15 to 22 and, in any case, within one month of from the receipt of the request. This deadline can be extended by another two months, if necessary, taking into account the complexity and number of requests. The person in charge must inform the interested party of any of these extensions within one month of receiving the request, indicating the reasons for the delay. When the interested party submits the request for*

*electronic means, whenever possible the information must be provided by these same means, unless the interested party requests that it be done in another way.*

*4. If the data controller does not process the interested party's request, without delay and at the latest after one month, he must inform him of the receipt of the request, of the reasons for the its non-action and the possibility of presenting a claim before a control authority and of exercising judicial actions.*

*5. The information provided under articles 13 and 14, as well as any communication and action carried out under articles 15 to 22 and 34, must be free of charge. If the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the data controller may:*

*a) Charge a reasonable fee, in accordance with the administrative costs that have been incurred to facilitate the information or communication, or to carry out the requested action.*

*b) Refuse to act on the request.*

*The data controller must bear the burden of demonstrating the manifestly unfounded or excessive nature of the request."*

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.*

*2. (...).*

*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. (...)*

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 the data*

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*of these that appear in the aforementioned documentation, nor of the right of the professionals who have intervened in its preparation, who may 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."*

Finally, article 16 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, provides the following:

*"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 period, they can submit a claim to the Catalan Data Protection Authority.*

*2. The Catalan Data Protection Authority must expressly decide on the merits or inadmissibility of the claim referred to in paragraph 1 within six months, with the prior hearing of the person responsible for the file and also of the interested persons if the result of the first hearing procedure makes it necessary. Once this term has passed, if the Authority has not notified the resolution of the claim, it is understood that it has been rejected.*

*3. The resolution of total or partial estimation of the protection of a right must establish the term in which it must take effect.*

*4. If the request to exercise the right before the person responsible for the file is estimated, in part or in full, but the right has not been made effective in the form and the deadlines required in accordance with the applicable regulations, the interested parties can bring it to the attention of the Catalan Data Protection Authority so that the corresponding sanctioning actions are carried out."*

3.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the entities responsible for the treatments referred to by the person making the claim in their access request, 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 who 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.

3.1. Regarding the identity of those responsible for the treatments, the following should be specified:

- The Institut Català de la Salut (ICS), a public company attached to CatSalut, is the entity responsible for processing the claimant's HC data, carried out through the e-CAP application from the centers of primary care in Lleida following:  
ABS Cappont, CAP Eixample, CUAP Lleida, CAP First of May, CAP Onze de



September And also of the data processing carried out through the SAP ARGOS application from the Arnau de Vilanova Hospital, in Lleida.

- The public company Gestió de Serveis Sanitaris (GSS), attached to CatSalut, is the entity responsible for processing the HC data of the claimant, carried out through the e-CAP application from the centers primary care in Lleida following: local office in Alpicat and Cap Lleida Rural Nord. And also the processing of data carried out through the SAP-ARGOS application from the Regional Hospital of Pallars and the University Hospital of Santa Maria, in Lleida.
- The Fundació Sant Hospital (hereafter, the Foundation), which is part of SISCAT, is the entity responsible for the data processing of the claimant's HC, carried out through the SAP-ARGOS application from Hospital Fundació Sant Hospital de la Seu d'Urgell. Given that, by letter dated 10/09/2019, the claimant has withdrawn the part of his claim that refers to the possible neglect of the right of access by this entity, this resolution does not contain a pronouncement on the actions of the Foundation.
- The Department of Health is responsible for processing the claimant's data listed in HC3. Since it is not inferred from the content of the access request that the person making the claim had requested access to the HC3, no pronouncement is made on the part of the answer given by CatSalut - for account of the Department of Health - referring to HC3. A different issue is the communications of data made to the HC3 by the aforementioned ICS and GSS health centers, which do form part of the right of access exercised by the claimant, as will be explained later, but which in any case is information that must be provided by the person in charge of the treatment that carried out the data communications, that is, the ICS or the GSS company.

3.2. With regard to compliance with the legally established deadline for responding to the access request, it is documented in the proceedings that on 02/01/2019 the Department of Health received a letter from the person making the claim, through which exercised its right of access. It should be noted that the person making the claim addressed his first letter of 1/02/2019 to the Department of Health, and the subsequent ones where he reiterated and specified his request were addressed to the Citizen Service Department from CatSalut. So he did not submit the request for access to the ICS and GSS, companies to which, at the outset, it was necessary to have submitted individual requests for access, since they are responsible for the treatments, and for both the entities obliged to respond to the request for access presented by the claimant.

However, the fact that both the ICS and the GSS company are part of CatSalut, and this one of the Department of Health, as well as the fact that the request for access was aimed at numerous health centers and that it was formulated in open terms (given that part of their request referred to the identity of the people who had access to his medical history, which could include centers outside the ICS and GSS), would explain

that the request had finally been addressed to CatSalut, the entity entrusted with the management and administration of the centers it integrates, including the ICS and GSS (art. 7.1.c of law 15/1990, of 19 July, on the health system of Catalonia). It is worth saying that CatSalut was obliged to send the request for access to the ICS and the GSS company, in accordance with the provisions of article 12.1 of Law 26/2010, of August 3 of legal regime and procedure of the public administrations of Catalonia (LPAC).

In accordance with article 12.3 RGPD, the data controller must resolve and notify the access request within a maximum period of one month from the date of receipt of the request. Well, neither the ICS nor the GSS have proven to have given a response to the claimant within one month, nor to have notified the claimant of the two extensions of this term that are also provided for in this article and section. It is true that the calculation of this maximum term in procedures initiated at the instance of a party - as is the case - begins from the date on which the request was entered in the register of the competent body for the its processing, and the Authority does not know the specific date, at least as far as GSS is concerned. However, as far as the ICS is concerned, there is an office dated 03/04/2019 from the Territorial Administration of Lleida, referring to the traceability of the medical history of the claimant, addressed to the Area of Attention to the Citizens of the ICS, which mentions a request made by this Area dated 03/14/2019, which shows that the ICS was aware of the access request made by the person claiming at least since 03/14/2019. So the one month period would end on 04/13/2019. And as far as GSS is concerned, in the documentation provided there is only one date, 08/05/2019, on which the office of the Health Data Protection Delegate would have forwarded the claimant's request for access . So the one month period would end on 09/04/2019.

According to the documentation provided by the person claiming on 09/10/2019 before the Authority, this person would not have received a response until 09/09/2019 (or at a later date close to this), in which the director of the office of the health data protection delegate has issued a partially estimative resolution of the claim presented by the claimant here, which resolution contains, at the same time, the response to your access request.

Consequently, the estimate of the claim proceeds, which was based on the lack of response within the deadline to the request to exercise the right of access. This notwithstanding what will be said below regarding the substance of the claim.

4.- Once the applicable regulations have been set out, it is appropriate to analyze whether the response given by the ICS and GSS to the access request made by the person making the claim conforms to the precepts transcribed in the second basis of law, or not, as stated by the person claiming here. The following is answered separately depending on its object.

4.1. About the request for a copy of the medical history.

With regard to the request for access to the HC, it must be specified that through a letter submitted on 09/10/2019 to the Authority, the person making the claim has specified that his claim for neglect of the right of access he also refers to this issue, namely not having received a copy of his HC.

In this regard, during the hearing process, the data protection representative of the ICS and GSS stated in writing submitted to the Authority on 08/05/2019, that *"the interested party has at his disposal through the viewer of La Meva Salut (...) access to the information it refers to as provided in article 13.2 of the LPODGD".*

The answer may not be favorably received. The indicated web address corresponds to the HC3, and this does not contain all the health data of the patients of the Catalan public health, among them the claimant here, but only a part. About the content of HC3 the same website La Meva Salut <https://lamevasalut.gencat.cat/web/cons/pre Preguntes freqüents>, in which the following is reported (emphasis ours):

*"When healthcare professionals enter data into your medical records at the facility where you are cared for, through an automated system, the most important data is entered into a data repository and published to your shared medical record (HC3) and from from that moment, they are visible in La Meva Salut for you to consult.*

On the other hand, from the content of the letter that the claimant presented to the Authority on 09/10/2019, it is clear that, at least until that date, the claimant would not have received a copy of your HC. And finally, the resolution dated 09/09/2019 of the director of the DPD office also makes no mention of this part of the request. Consequently, in terms of substance, the claim must also be assessed with regard to the request for access to the medical history.

4.2. About the request for access to the other information provided for in article 15 RGPD.

A similar answer must be given to the part of the claim referring to the neglect of the request for access to the information provided for in article 15 RGPD (purposes of the treatment, categories of data that are treated, recipients, retention period, etc.). In the hearing procedure, the ICS and GSS did not prove that they had provided this information to the person making the claim, regarding the neglect of which he stated that he was also complaining. And finally, the resolution dated 09/09/2019 of the director of the DPD office also makes no mention of this part of the request. Consequently, in terms of substance, the claim must also be assessed with regard to the request for access to the other information provided for in article 15 RGPD.

4.3. About the request for access to the identity of the people who have accessed the medical history.

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On 01/02/2019 the claimant requested: *"identification data of all the professionals, health and non-health, who have accessed the data of their clinical/ medical history, both from the application E -CAP [ICS] as from the SAP-ARGOS Assistance application [Management of Assistance Services, Hospital Universitari de l'Arnau de Vilanova, Hospital Universitari de Santa Maria, Hospital Comarcal del Pallars, etc.], specifying both their name , such as the date of access to his clinical history, from the year 2012 to today [30/01/2019]."*

In this regard, it can be inferred from the resolution dated 09/09/2019 of the director of the DPD Health office that, with regard to this issue, the ICS and GSS have partially assessed the request for access formulated by the claimant, regarding the identity of the health centers to which the claimant's data have been communicated, but not regarding the identity of the natural persons (health care or administration and management) that have accessed their clinical history, either from ICS or GSS centres, or from the centers to which the data have been communicated (in essence, those who have accessed HC3).

In the aforementioned resolution of the DPD of Health, reference is made to the Authority's consolidated criteria regarding this issue and which has been set out in several opinions, and also in resolutions issued following complaints with the same purpose, and that here it stays. This is why it is advanced that in this matter the claim cannot succeed, although a point must be made, since, as explained, there is certain information about certain accesses that do form part of the right of access, and that therefore the ICS and GSS should provide.

The information relating to the accesses made to the clinical history, such as the date of access, the professional category of the user who accesses it, the module or information that would have been accessed, etc., is not part of the right of access provided for in article 15 of the RGPD, which has been transcribed in the legal basis 2n.

Nor is it part of the right of access provided for in article 15 of the RGPD, the information regarding the identity of the users who have accessed it. Thus, the right of the person claiming here to access the identity of the ICS and GSS users who have accessed their clinical history cannot be recognized. This criterion maintained by this Control Authority has been confirmed by the jurisprudence in several judgments, which although they referred to article 15 of the LOPD, are fully applicable to article 15 of the RGPD. This is the case, for example, of the sentence handed down by the National Court on 02/26/2014, where the following is determined: *"it must be noted that the request for access to information made by the plaintiff here before the Ministry of Hacienda and Administrations Públicas is outside the content of the right of access to personal data recognized by the holder of such data in article 15 of the LOPD, since it is aimed at obtaining information on the identity of public officials or servers who could have accessed the personal data of the actress, presuming that they could have given them to third parties. Therefore, it does not aim to obtain information about the personal data being processed, the origin of such data and the communications made or intended to be made of them by the person in charge of the file, but about the data of identity of those public employees"*

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*belonging to the administrative organization of the person responsible for the file who would have accessed them, which are not included in the right of access recognized to the owner of personal data and configured legally in the terms expressed".*

On the other hand, information regarding the communications of actual or planned data, as this is provided for in article 15.1.c) of the RGPD.

In other words, any access to the HC of a center for which the ICS or GSS is responsible, by a third person or entity outside the ICS or GSS - as would be the case for professionals from other foreign health centers who had been able to access the ECAP or SAP-ARGOS - they would indeed involve a communication of data under the terms of article 15 of the RGPD, since these eventual consultations carried out by third parties would fit into the concept of *"recipients or categories of recipients to whom the personal data was or will be communicated, in particular recipients in third countries or international organizations"*, which is part, as has said, of the right of access regulated in art. 15 of the RGPD, in which the recipient would be the center to which the professional who would have accessed it is attached, and consequently such information on the communication of data to a third party is part of the right of access and must be informed about it. This would also be the case for the eventual integration of HC data contained in the e-CAP and SAP-ARGOS Assistance database in the HC3 file.

To everything that has been pointed out so far about the scope of the right of access of the RGPD, it is also necessary to add a mention to the regulation of the right of access to the clinical history that provides for the health regulations transcribed in the foundation of previous right, and which, as has been advanced, does not recognize the patient's right to know the identity of the professionals who have accessed their clinical history. However, said regulation does contemplate the identification of professionals involved in the patient's health care. Specifically, the art. 13.1 of Law 21/2000 establishes that *"With the reservations indicated in section 2 of this article, the patient has the right to access the documentation of the clinical history described by article 10 (...)"*, and the art. 10 points out that part of the clinical history, among others, is the information relating to the identity of the *"doctor responsible for the patient"* (Art. 10.1a), *"interconsultation sheets"* (Art. 10.1.b), and it also provides that *"In hospital clinical histories, in which more than one doctor or healthcare team often participates, the actions, interventions and prescriptions made by each professional must be recorded individually"* (art. 10.2) . The person now claiming would therefore have the right to access this information regarding the professionals who have intervened in their he

In conclusion, it can be noted that the claimant's right of access does not cover the information regarding the identity of the professionals who have accessed her medical history, but it does cover the information about the health centers from which they would have been able to access the data contained in the ICS and GSS patient file, and also the data communication carried out on the occasion of the integration of the data in the HC3, as well as any other data communication that had been made to a third party.



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Well, the resolution dated 09/09/2019 of the DPD Health office that the person claiming before the Authority has provided, would be accompanied by an annex 1 including lists corresponding to the records of access to the claimant's HC, carried out from 02/02/2017 to 01/28/2019 from the centers attached to the ICS, as well as those carried out from 09/10/2012 to 09/18/2018 from the centers attached to GSS. To this should be added a list that the Department of Health sent to the claimant together with a letter dated 25/03/2019, which would correspond to the accesses to the HC3 made on 01/09/2018 from CAP Salou.

These lists include information about the health center from which it was accessed, the date of access and, as regards the list of accesses through the ECAP, there is also a field ("screen") that looks like which would illustrate the action that would motivate the access and the information consulted, specifying the accesses to the HC3.

Regarding the fulfillment of the duty to inform about the communications made, the delivery of the aforementioned lists could be considered sufficient, given that they include more information than requested. This, as long as the information it contains is intelligible to the person concerned (art. 12.1 RGPD). Regarding this, it is not superfluous to add that it would be more understandable if the list noted those accesses that properly constitute a communication of data.

With regard to the time intervals to which the lists provided are limited, which is partly lower than that indicated by the person claiming in his request for access, it should be stated that, although current regulations do not require the preservation of log of accesses in a time interval as wide as that requested by the person making the request, in the event that the information provided regarding the accesses that constitute a communication of data is less than that requested, for the reason that it is only requested has been deleted, it must be specified in the response to the person making the claim, a motivation that is also not included in the actions that have been provided to the person making the claim.

In accordance with the above, with regard to the part of the claim referring to the neglect of the claimant's right of access to information regarding the identity of the people who had accessed their HC from the centers and applications mentioned, it is necessary to assess the claim solely with regard to the information regarding the data communications made, since, although the claimed entities have provided information in this regard, it was not until the processing of the present guardianship procedure that the claimed entities have delivered it. And with regard to the information regarding the identity of the people who have accessed it, it should be dismissed for the reasons indicated.

5.- In accordance with what is established in articles 16.3 of Law 32/2010 and 58.2.c) RGPD, 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.

For the reasons indicated in the third-party legal basis, the ICS and GSS should require the following:

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#### 5.1) Regarding the ICS:

It is necessary to require it so that, within 10 counting days from the day after the notification of this resolution, it provides the person here claiming a copy of your HC, and the information on the rest of the ends provided for in article 15 RGPD (purposes of the treatment, categories of data that are treated, recipients, retention period, etc.), and in the same period accredit before this Authority.

It is also appropriate to require it so that, in relation to the lists given to the claimant corresponding to the accesses to their HC and HC3, they are informed about the communications of data carried out in the requested periods that do not appear in the lists that have been given to you. And in the event that data communications have not been carried out in these requested periods, or that this information has been deleted, the person making the claim will be informed of this end.

#### 5.2) Regarding GSS:

It is necessary to require him so that, within 10 days from the day after the notification of this resolution, he provides the person here claiming a copy of his HC, and informs him about the rest of 'extremes provided for in article 15 RGPD (purposes of the treatment, categories of data that are treated, recipients, retention period, etc.), and in the same period certify it before this Authority.

It is also appropriate to require it so that, in relation to the lists given to the claimant corresponding to the accesses to their HC and HC3, they are informed about the communications of data carried out in the requested periods that do not appear in the lists that have been given to you. And in the event that data communications have not been carried out in these requested periods, or that this information has been deleted, the person making the claim will be informed of this end.

6.- In view of the last letter that the claimant submitted on 09/10/2019 before the Authority, in which he makes it clear that numerous accesses to his clinical history carried out from various health centers of the ICS would not be justified, arguing for such consideration that he has never required assistance in these centers ("*nor elective, or nursing, or administrative services, or any other*"), it is considered appropriate to open a preliminary information phase in order to elucidate whether the ICS and/or the Department of Health could have committed an offense of the data protection regulations, in the event that illicit access could have been made to the HC and HC3 of the claimant.

For all that has been exposed,

RESOLVED

First.- The guardianship claim made by Mr. (...) (...) against the Catalan Institute of Health and Management of Health Services, of the Government of the Generalitat, regarding the fact of to have responded late.

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As for the merits, the claim is partially upheld, and the right of access to the content of the clinical history, to the rest of the information provided for in art. 15 RGPD, including the reference to the data communications carried out, and the claim regarding access to the information relating to the identity of the people who have accessed it is rejected.

Second.- Request the Catalan Institute of Health and Management of Health Services so that within 10 days from the day after the notification of this resolution they give effect to the right of access exercised by the person claimant, in the manner indicated in the 5th legal basis. Once the right of access has taken effect, within the same period of 10 days the claimed entities must report to the Authority.

Third.- Open a preliminary information phase for the purpose of elucidating whether the Catalan Institute of Health and/or the Department of Health have committed an infringement of data protection regulations due to illegal access legal in the HC and HC3 of the person claiming.

Fourth.- Notify this resolution to the Catalan Health Institute, to Health Services Management, and to the person making the claim.

Fifth.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://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 directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

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

The director,