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File identification

Resolution of the rights protection procedure no. PT 25/2019, referring to the Catalan Health Institute.

Background

1.- On 07/06/2019 the Catalan Data Protection Authority received a letter written by Mrs. (...) against the Catalan Institute of Health (hereinafter, ICS), for the alleged neglect of their right of access.

2.- On 06/19/2019 the Authority transferred the claim to the data protection delegate of the ICS (hereafter DPD of the ICS), in order for him to respond to the claim within one month, and communicate this response to the Authority, as provided for in article 37.2 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (hereinafter , LOPDGDD).

3.- On 31/07/2019 the Authority received the response of the DPD of the ICS, accompanied by a letter dated 25/07/2019 from the Territorial Administration of Barcelona of the ICS, addressed to the person making the claim, where it was acknowledged that on 04/10/2019 this person had submitted an access request to the Litoral-Esquerri Primary Care Service (SAP) ICS, referred to his medical history, and his request was 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.- The claim that is resolved here was made due to the alleged neglect of an access request that the person making the claim presented to the ICS on 04/10/2019. The right of access is regulated in article 15 of the RGPD, which provides for 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 (...)."

Also, regarding the rights regulated in articles 15 to 22 RGD, article 12.3 RGD determines that the data controller must provide the interested party with all the information related to their actions derived from the request to exercise the right, within one month from the receipt of said request. And article 12.4 RGD establishes that in the event that the person in charge does not proceed with the request, within the same period of one month he must inform the person requesting the reasons why he has not resolved the request legality and the possibility of filing a claim before the Authority and of taking legal action.

On the other hand, Article 37.2 of the LOPDGDD empowers the control authorities to forward the claims received to the delegated person for data protection of the person in charge of the treatment, so that he gives an answer to the person making the claim, and subsequently communicates the response given to the control authority:

"2. When the person concerned submits a claim to the Spanish Data Protection Agency or, where appropriate, to the autonomous data protection authorities, they may refer the claim to the data protection delegate so that he responds in the term of one month. If after this period the data protection delegate has not communicated to the competent data protection authority the response given to the claim, this authority must continue the procedure in accordance with the provisions of Title VIII of this Law organic and its rules of deployment."

With regard to formal issues, and specifically, the one relating to compliance with the deadline for responding to the request for access presented by the person making the claim, in the letter dated 07/25/2019 from the Territorial Management de Barcelona it follows that the claimant submitted the request for access on 04/10/2019 to the Litoral-Esquerra Primary Care Service of the ICS. In accordance with article 12.3 RGD, the deadline for responding to the access request ended on 09/05/2019 (or in any case on a later date close to this, in which the request should have entered in the register of the competent body for its processing). On the other hand, the ICS did not respond until, at least, 25/07/2019, which is the date of the letter from the ICS Management responding to the access request, and therefore once the period provided for the purpose had already expired.

With regard to the substance of the claim, once the Authority has forwarded the claim to the DPD, the ICS has responded to the access request by means of a letter dated 07/25/2019, which is accompanied by the information requested by the person making the claim. So things are, the response, although extemporaneous, from the ICS entails the subsequent loss of the object of the claim, referring to the lack of response from the ICS and access to the requested documentation, by the which proceeds the termination of the procedure.

In this sense, article 21.1 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) provides that: "the Administration is obliged to issue an express resolution and notify it in all procedures regardless of the form of initiation. In cases of prescription, waiver of the right, expiration of the procedure or withdrawal of the request, as well as sudden disappearance of the object of the procedure, the resolution consists of the declaration of the circumstance that occurs in each case, with indication of the facts produced and the applicable rules. (...)". In the same sense, article 53.2 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, is pronounced.

resolution

Therefore, I resolve:

1. Declare that the Catalan Health Institute (ICS) has responded extemporaneously to the access request made by Mrs. (...). With regard to the merits of the claim, the resulting loss of the object of the guardianship claim is declared for having finally given an answer, and consequently the termination of the procedure.
- 2.- Notify this resolution to the Catalan Health Institute and the person making the claim.

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 Authority for the Protection of Data and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties may file, as an option, an appeal for reinstatement before the director of the 'Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or file an appeal directly administrative litigation before the administrative litigation 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, regulator of the administrative contentious jurisdiction.

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

The director,