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In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

#### File identification

Resolution of the rights protection procedure no. PT 32/2019, referring to the Health Consortium of (...).

#### Background

1.- On 27/06/2019 the Catalan Data Protection Authority received a claim made by Mr (...) against the Health Consortium of (...) (hereinafter, Consortium), for the alleged disregard of the right to rectification, provided for in article 16 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 of April, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof.

2.- By official letter dated 03/07/2019, the Authority required the person making the claim to certify that before submitting the claim he exercised the right of rectification before the data controller.

3.- On 07/07/2019 the claimant submitted to the Authority a copy of the request for rectification that he submitted on 04/10/2019 to the Consortium's Citizen Service Unit, through the which requested the deletion of the phrase "sporadic cocaine use", which appeared in a medical report dated 12/15/2018 issued in a hospital belonging to the Consortium.

4.- On 07/09/2019, the Authority transferred the claim to the Consortium's data protection delegate (hereinafter, the Consortium's DPD), in order 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 the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

5.- On 31/07/2019 the Authority received the response from the DPD of the Consortium, accompanied by the following two letters:

- A letter dated 07/16/2019 from the Data Protection Coordinator of Consortium, addressed to its DPD following the transfer of the claim, where the following was noted:

"In relation to the reference procedure, inform you that the request of Mr. (...), dated April 10, 2019, in exercise of the right of rectification, that was it served, in time and form, on the 19th of the same month, proceeding to the rectification of the required information and communicating this circumstance to the interested party, through the

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letter sent by post to the patient's address, which is the same as that stated in the subsequent claim before the APDCat, without us knowing that there has been no incident in the communication sent.

For all that, we do not understand what is the reason for the later claim presented, en so much so that there is no fact or circumstance to justify it and no legal basis for any violation."

- The letter dated 04/17/2019 from the Director of Citizen Services of the Consortium, in response to the request for rectification, in which the following is indicated:

"The Citizen Service Unit of this center has received the letter (...) that you sent to us on April 10, 2019 in connection with your request for rectification of personal data in your medical report from the Emergency Service of Hospital of (...) last December 16, 2018.

(...)

(...) Once your request for rectification of data has been evaluated, we must tell you that the information you are requesting to correct is in the report because you yourself referred to it when asked during the anamnesis.

The doctor who treated him in the Emergency Department has corrected these data.

You can go to collect a copy of the report at the offices of Atención al Ciudadano del Hospital de (...) (first floor) during the hours of (...), providing your ID.

(...)"

6.- Given that during the processing of the procedure the claimant stated before the Authority that he had not received the aforementioned letter of response, by means of an official letter dated 06/08/2019 the DPD of the Consortium was requested that, within ten days from the day following receipt of this office (which took place on the same day 06/08/2019), provide a copy of the proof of notification to the person here claiming the letter of 04/17/2019 in response to your request for rectification.

7.- Once the granted deadline has passed, it is not recorded that the written authority of the DPD of the Consortium, accompanied by the proof of notification requested, has been 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.- The claim that is resolved here was formulated due to the alleged disregard of a request for rectification that the person making the claim presented to the Consortium on 04/10/2019. The right of rectification is regulated in article 16 of the RGD, which provides for the following:

"The interested party has the right to obtain from the data controller the rectification of inaccurate personal data affecting him, without undue delay. Having in

taking into account the purposes of the treatment, the interested party has the right to have incomplete personal data completed, even through an additional declaration."

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 in particular, the one relating to compliance with the deadline for responding to the request for rectification presented by the claimant, it is stated in the procedure that on 04/10/2019 the claimant submit a rectification request to the Consortium's Citizen Service Unit. In accordance with Article 12.3 RGD, the deadline for responding to the rectification request ended on 05/09/2019.

The DPD has provided the Authority with a copy of the Consortium's letter, dated 04/17/2019, by which a response would be given to the request for rectification, but the person making the claim has stated that he has not received such a letter. On the proof of compliance with the obligation to respond, article 12.4 LOPDGDD is clear when it establishes what:

"The proof of compliance with the duty to respond to the request to exercise their rights made by the affected person rests with the person responsible."

During the hearing phase, the Authority requested the Consortium's DPD to certify the notification of the response letter to the person making the claim, without obtaining any response.

Given the indicated precept, the lack of accreditation of the response to the claimant entails the estimation of the present claim, which was based precisely on the lack of response.

3.- Regarding the provenance of the requested rectification, the estimation of the request for rectification by the Consortium makes it unnecessary to carry out a statement on this specific issue.

4.- In accordance with what is established in article 16.3 of Law 32/2010, in cases of estimation of the claim for the protection of rights, the controller must be required so that within the term of 10 days to make the exercise of the right effective.

In accordance with this, it is necessary to require the Consortium so that, within 10 counting days from the day after the notification of this resolution, it notifies the person claiming the letter of response to their request of rectification, and, in the case that he has not yet done so, carry out, in accordance with his letter of 04/17/2019, the requested rectification. Once the right of rectification has taken effect in the terms set out and the claimant is notified, within 10 days the Consortium will have to report it to the Authority.

resolution

Therefore, I resolve:

First.- Estimate the guardianship claim made by Mr. (...) against the Health Consortium of (...), for the reasons indicated in the legal basis 2n.

Second.- To require the Health Consortium of (...) so that within 10 counting days from the day after the notification of this resolution, it makes effective the right of rectification exercised by the person claiming in the form indicated in the 4th legal basis, which includes the notification to the affected person. Once the right of rectification has taken effect, within the same period of 10 days the Health Consortium of (...) must report to the Authority.

Third.- Notify this resolution to the Health Consortium of (...) and the person making the claim.

Fourth.- 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,

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