

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

File identification

Resolution of the rights protection procedure no. PT 42/2020, petition against the Catalan Health Service.

Background

1. On 09/19/2020, the Catalan Data Protection Authority received a letter from Mr. right of rectification that he had previously exercised before the Catalan Health Service (hereinafter, CatSalut), regarding his first surname (ABCDEFGH I of JKLMNOPQR), which was not fully recorded on the health card. The claimant provided various documentation relating to the exercise of this right and CatSalut's response dated 09/18/2020, through which CatSalut indicated that "his surname exceeds the number of digits allowed in the fields of the database of the individual health card (TSI), in such a way that his last name does not appear in full."

In his letter of claim, the claimant remarked that "this error systematically causes problems locating my clinical history" and that "in the event of an emergency, if I were unconscious, I would not be able to help the health workers locate my history clinic and would put MY LIFE in danger."

2. On 09/28/2020, the claim was transferred to CatSalut so that within 15 days it could formulate the allegations it deemed relevant.

3. CatSalut made allegations through a letter dated 02/10/2020, in which it stated that "We have reviewed the data requested by [the person making the claim], it is not an error, nor does it generate any types of incidents in the location of their data" and that "It should be borne in mind that the search for users is not carried out solely by surnames but by the CIP number."

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. Article 16 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (hereinafter, the RGPD), regulates the right of rectification in the following terms:

"The interested party will have the right to obtain without undue delay from the controller the rectification of inaccurate personal data concerning him. Taking into account the purposes of the treatment, the interested party will have the right to have the data completed

personal data that are incomplete, including through an additional declaration".

For its part, article 14 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right of correction:

"When exercising the right of rectification recognized in Article 16 of Regulation (EU) 2016/679, the affected person must indicate in his request which data he refers to and which correction must be made. It must be attached, when necessary, the supporting documentation of the inaccuracy or the incompleteness of the data being processed".

In relation to the rights contemplated in articles 15 to 22 of the RGD, paragraphs 3 to 5 of article 12 of the RGD, establishes the following:

"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.

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

a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or

b) refuse to act in respect of the request.

The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.

(...)"

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, 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 deadline, they can submit a claim to the Catalan Data Protection Authority."

3. Once the above has been established, it is necessary to analyze the merits of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case the rectification of the data in the terms that usually tender the person claiming. Specifically, the claimant requested the rectification of his first surname (ABCDEFGHIJ of KLMNOPQR), which was not correctly recorded in the individual health card (hereafter, TSI), nor in the TSI database.

As a starting point, it should be borne in mind that article 16 of the RGPD regulates the right of rectification as the right of the affected person to have inaccurate or incomplete data modified, thus complying with the principle of accuracy regulated in article 5.1.d) of the RGPD.

The right to rectification is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data.

This is why the limitations to this right of rectification must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. Thus, the causes of denial of the right to rectification are found in article 23 of the RGPD, which must be provided for "through legislative measures" (art. 23.1 RGPD).

In the framework of this rights protection procedure, CatSalut has not invoked any of the causes provided for in article 23 of the RGPD that could prevent the rectification requested by the person making the claim.

On the contrary, in its statement of objections it is limited to pointing out that "it is not an error" (it is inferred that CatSalut refers to the incomplete treatment of the claimant's first surname).

In the present case it is clear that CatSalut treats the data relating to the claimant's first surname incompletely (both in the TSI database and in the issued TSI itself).

Having said that, according to the answer that CatSalut gave to the claimant on 09/18/2020, the reason for the claimant's first surname being incomplete would be that it exceeds the number of digits available in the field of the TSI database corresponding to the first surname.

Well, if this is the reason for treating the claimant's first surname incompletely (a point that has not been invoked by CatSalut in its statement of objections), it must be emphasized that this circumstance is not, nor can it be equated to, any of the causes of denial or modulation of the right of rectification.

In this sense, it is necessary to point out that article 25.1 of the RGPD regulates data protection by design, according to which the data controller must implement, both when determining the means of treatment and in the at the time of the treatment itself, the appropriate technical and organizational measures designed to effectively apply the principles of data protection, among which is the principle of accuracy contained in article 5.1.d) of the RGPD. In turn, data protection by design also means that the person in charge must integrate the necessary guarantees in the treatment, in order to comply with the requirements of this Regulation and to protect the rights of the interested parties, which include the right of rectification.

In short, and from the perspective of the right of rectification regulated in the RGPD, the present claim for the protection of the right of rectification should be considered, given that in the present procedure it has been proven that with the answer carried out by CatSalut it is not made effective the right of rectification exercised by the person claiming.

4. 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 protection of rights, the person in charge of the file must be required so that within the term of 10 days make effective the exercise of right In accordance with this, it is necessary to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, proceed to rectify the first surname of the person making the claim, in such a way that appears completely both in the TSI database and in the new TSI that CatSalut must issue and deliver to the person making the claim.

Once the right of rectification has taken effect in the terms set out and the person making the claim has been notified, within the same period of 10 days the claimed entity must report to the Authority.

resolution

Therefore, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against the Catalan Health Service.
2. Request CatSalut 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 making the claim, in the manner indicated in the 4th legal basis. one

once the right of rectification has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

3. Notify this resolution to CatSalut and the person making the claim.
4. Order the publication of the resolution on the Authority's website (apdcat.gencat.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 the LPAC or to directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, in the period of 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,