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Autoritat Catalana de Protecció de Dades

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File identification

Resolution of the rights protection procedure PT 60/2020, relating to the Campdevànol Hospital Foundation.

Background

1. On 06/12/2020 the Catalan Data Protection Authority received a letter from Mr. (...) (hereafter, the claimant), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Campdevànol Hospital Foundation (hereafter, FHC) . Specifically, the claimant stated that on 02/14/2020 he had sent an email to the FHC asking who had entered his medical history, and that he had not received a response to this request.

The person making the claim provided a copy of the email that on 02/14/2020 he had sent to the data protection representative of the FHC, in which he literally asked *"which people have entered my medical history"* in the period between 14 /02/2019 and 14/02/2020.

2. On 12/16/2020, the claim was transferred to the FHC so that within 15 days it could formulate the allegations it deemed relevant.

3. The FHC made allegations by means of a letter dated 26/02/2021, in which it set out, in summary, the following:

- That the claimant's request was answered on the same day 02/14/2020, by sending an email, in which he was informed that according to data protection regulations *"the Foundation does not was authorized to give him the list of people who had accessed his Clinical History".* That, in that same reply email, *"the Foundation informed him that an internal review of his Clinical History would be carried out in order to detect possible improper access by Foundation personnel, a fact that would be duly communicated to him, and, logically, we would take the appropriate internal measures".*

- That in the face of the claimant's insistence on knowing the identity of the people who had accessed his medical history, he will be told in subsequent communications dated 02/21/2020, 05/29/2020 and 06/18/ 2020, that the right of access regulated in the data protection regulations *"does not include the obligation to communicate the identity of specific persons who, as the entity's own staff, have been able to access its HC",* criterion which had been collected in different resolutions of the Catalan Data Protection Authority.

The claimed entity provided the following documentation:

a) Copy of the emails that the claimant here had sent to the entity on several dates (14/02/2020, 19/02/2020 and 24/03/2020) in which he expressly requested access to the identity of the people from the FHC who had accessed his medical history.

b) Copy of the communications (e-mails and offices) that the entity had sent to the claimant in response to his request, on the dates and terms set out above.

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 15 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 (hereafter, the RGPD), regarding the right of access of the interested person, provides that:

> *"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal 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 was communicated or will be communicated, in particular recipients in third countries or international organizations;*
> *d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*
>
> *e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
> *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 profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the*
> *importance and the expected consequences of said 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 adequate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee for any other copy requested by the interested party
based on administrative costs. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, 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, without undue delay 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.
(…)"

For its part, article 13 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 to access:

> *"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.*
> *When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information , that the affected person specifies the data or the processing activities to which the request refers.*
> *2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.*
>
> *However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.*
> *3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it*
> *4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay.".*

Apart from the previous regulation, in the case analyzed here, it is also necessary to take into account the applicable health regulations. Specifically, the Basic State Law 41/2002, of November 14, on Patient Autonomy, 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, on Patient Autonomy and Rights to Information and Clinical Documentation, 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."

Finally, article 16.1 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 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 FHC 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 his complaint which started the present rights protection procedure, it was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 02/14/2020 the claimant here sent an email to the FHC requesting access to the identity of the people from the FHC who had accessed his medical history, in the period between 02/14/2019 and 02/14/2020.

In accordance with article 12.3 of the RGPD, the FHC had to resolve and notify the request to exercise the requested right within a maximum period of one month from the date of receipt of the request . In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the administrations

public authorities of Catalonia (hereafter, LRJPCat), on the one 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 received in the registration of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art.
40.4 LPAC).

Well, contrary to what the claimant stated in his claim, the FHC complied with what is determined by article 12 of the RGPD with regard to the deadline for solving and notifying the request made, to the extent that he has certified to have responded to said request on the same day that it was received by the entity; and not only that, but the FHC has also acknowledged having responded to the repeated subsequent letters formulated by the claimant here in which he reiterated his initial request (precedent 3rd, letter b/).

4. Once the above has been established, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, access to the information requested by the 'here claiming

As a starting point, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case , access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD. In addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data for which access has been requested.

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 person holding the data can know which data is theirs are subject to treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability 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. The reasons for denying the right of access can be found in article 23 of the RGPD, which must be foreseen *"through legislative measures" (art.* 23.1 RGPD).

As has been progressed in the antecedents, on 14/02/2020 the person claiming requested information about *"which people have entered my medical history",* a request that he reiterated in subsequent emails dated 19/02/2020 and 03/24/2020, not agreeing with the answer that the FHC had given him on the same day 02/14/2020 in response to his

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first written It is proven that the FHC reported here claiming that the right of access regulated in article 15 of the RGPD *"does not include the obligation to communicate the identity of the specific persons who, as staff of the entity, have been able to access their HC",* and that, as far as this matter is concerned, the criterion established by this Authority was followed. In this same sense, the FHC was pronounced in the allegations made in this procedure.

Well, it must be said that the decision adopted by the FHC not to provide the claimant with the identity of the people in the service of the entity who have accessed their medical history is completely in accordance with the law. In fact, it is a consolidated criterion of this Authority, collected in several resolutions and opinions (for all, PT 21/2019 and CNS 8/2019, which can be consulted on the Authority's website www.apdcat.cat) which is not 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 the clinical history.

It is true that the Article 29 Group - made up of the Data Protection Authorities of the member states of the European Union, the European Data Protection Supervisor, and the European Commission; today replaced by the European Data Protection Committee - recommended to the member states of the European Union that they recognize the patient's right to know the information about who and when he has accessed his medical history, in order to generate confidence about the treatments carried out with your health data. But the regulation of the right of access made by article 15 of the RGPD does not contemplate this. Another thing is that the FHC, despite not having a legal obligation to do so, facilitated this information following this recommendation.

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 also does not recognize the patient's right to know the identity of the professionals who have accessed their clinical history.

It is not superfluous to indicate here that the right of access does form part of the information regarding the communications of data carried out or planned, since this is provided for in article 15.1.c) of the RGPD. It must be said, however, that the access request made by the claimant on 02/14/2020 is clear in terms of its scope (and so are his subsequent writings), since he limited himself to requesting the identity of the FHC people who accessed theirs
clinical history. As things stand, the FHC gave a full response to the claimant's request in its strict terms.

For all this, I resolve:

1. Dismiss the guardianship claim made by Mr. (...) against the Campdevànol Hospital Foundation.

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2. Notify this resolution to Campdevànol Hospital Foundation and the person making the claim.

3. 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, interested parties may file any other appeal they consider convenient for the defense of their interests.

The director,