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File identification

Resolution of the rights protection procedure no. PT 22/2021, urged against Hospital Clínic de Barcelona

Background

1. En data 19/02/2021 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per trasllat de l'Agència Espanyola de Protecció de Dades, una reclamació formulada pel senyor (...) (en endavant, persona reclamant), for which he made a claim for the alleged neglect of the right to rectification of his personal data that he had previously exercised before the Hospital Clínic de Barcelona (hereafter, HCB), since this entity had not responded to his request request

The claimant provided various documentation relating to the exercise of this right, among other things, the request for rectification that he had made before the HCB on 13/01/2021, in which he requested the rectification of certain information that the HCB would have included in its shared clinical history (HC3) by mistake, specifically, 3 reports drawn up by the HCB which included his first name, surname and CIP number, but linked to some tests in which he had not submitted; in fact, the claimant stated that he had not even been a patient of the HCB.

2. Although the claim made by the claimant before the Authority referred to the lack of attention to his right of rectification by the HCB, once the Authority analyzed the terms of the claim and the request made before the HCB, it was considered more appropriate to link it to the exercise of the right of deletion, to the extent that what interested the claimant here was the deletion of certain information that the HCB would have incorporated by mistake in your HC3.

2. On 03/04/2021, the claim was transferred to the HCB so that within 15 days it could formulate the allegations it deemed relevant.

3. The HCB made allegations in a letter dated 03/22/2021, in which it set out, in summary, the following:

- That the problem was derived from an error in the CIP registration for another sick patient - this one - of the HCB. That *"the error happened to coincide with the CIP of Mr. (...)"*.

- That on 03/19/2021 the reports that were erroneously attributed to him were removed from the claimant's HC3 and also to link said information to the patient to whom it corresponded.

- That by means of a letter of 22/03/2021 a response has been given to the request made by Mr. (...) on 13/01/2021, in which the causes of the mistake were explained and its amendment was confirmed.

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Among other documentation, the HCB provided a copy of the documentation it had sent on 03/22/2021 to the person making the claim, complying with the right exercised.

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 17 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 circulation of such data (hereinafter, the RGPD), referring to the right of deletion of the person concerned, provides that:

"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:

- a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
- b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;*
- c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;*
- e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;*
- f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.*

2. (...).

3. Sections 1 and 2 will not apply when the treatment is necessary:

- a) to exercise the right to freedom of expression and information;*
- b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;*

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- c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei); and section 3;*
- d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or*
- e) for the formulation, exercise or defense of claims"*

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, 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 requests. 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 15 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 deletion:

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- "1. The right of deletion must be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.*
- 2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge may retain the identification data of the affected person necessary in order to prevent future processing for direct marketing purposes."*

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. Having set out the applicable regulatory framework, it is then necessary to analyze whether the right to deletion exercised by the person making the claim was resolved and notified, within the period provided for by the applicable regulations, since precisely the reason for his complaint that initiated the present procedure for protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

In this respect, it is certified that the claimant, on 13/01/2021, submitted a request to HCB by which he requested the deletion of certain information that HCB would have included in his HC3 by mistake, in specifically, 3 reports drawn up by the HCB which contained his identifying data but linked to tests to which he had not undergone; in fact, the claimant stated that he had not even been a patient of the HCB.

In accordance with article 12.3 of the RGPD, the entity 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 legality. 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 public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party (as is the case) it starts from the date on which the request was entered in the register 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).

In view of what has been presented here, and taking into account that the HCB has stated that it was not until 03/22/2021 that no response was given to the claimant here, that is to say, once

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this Authority transferred the claim, it is clear that the answer that was finally given was clearly extemporaneous.

4. Once the above has been established, and with regard to the substance of the claim, it should be noted that, although extemporaneously, it is proven that the HCB has responded to the request to exercise the right of deletion formulated by the claimant here in the terms set out in the 3rd antecedent, response which is considered to be in accordance with the regulations on personal data protection. In this regard, it is not deemed necessary to make further considerations in this regard, nor to direct any request to the HCB, without prejudice to the fact that in the event that the person making the claim considers that their right to deletion has not been fully exercised, can bring it to the attention of this Authority.

For all this, I resolve:

1. Declare as extemporaneous the response of the Hospital Clínic de Barcelona, by which it considers the request made by Mr. (...), without proceeding to make any other pronouncement or any requirement regarding the substance of the claim, when the claimant's right has become effective, in accordance with what has been indicated in the legal basis
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2. Notify this resolution to the Hospital Clínic de Barcelona and to 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 February 20, which approves the Statute of the Catalan Agency of Data Protection, the interested parties can 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, and 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, within two months from the day after its notification, of 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,