

Carrer Rosselló, 214, Esc. A, 1r 1a
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File identification

Resolution of the rights protection procedure no. PT 31/2021, referring to the EBA Vallcarca, SLP.

Background

1. On 12/03/2021 the Catalan Data Protection Authority received a claim made by Mrs (...) (hereafter, claimant), for neglect of her request exercise of the right of access, which is provided for in article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the treatment of personal data and the free circulation thereof.

In the letter of complaint, he stated the following:

"Concerning the request for access to my medical history that I made in July 2020, I have only received this response dated 08/06/20: "We have received your request for access to Medical History I understand that you want to know if they have accessed your shared medical history, or what you want to know is at the level of primary care."

Thank you" Therefore, I understand that the deadline provided for in art. 12.3 of the European Data Protection Regulation has not been met."

2. On 23/03/2021 the Authority required the person making the claim to certify that they had previously exercised the right of access before the data controller, in accordance with the provisions of article 16.1 of Law 32/2010, of October 1, of the Authority, in accordance with the provisions of article 12 of the RGPD.

3. On 04/07/2021 a letter from the person making the claim was entered in the Authority's register, accompanied by the following documentation:

- Copy of the request for access, submitted on (...) to the Catalan Institute of Health (hereafter ICS), through which he requested access to the traceability of his medical history from (...) until (...) "by car repair professionals", in reference to the accesses carried out from the Integral Car Health Center (hereafter, CIS Cotxeres).
- Copy of the response letter, dated (...), by means of which the ICS informed the person here claiming that his request for access had been referred to the Muntanya-Dreta Primary Care Service, based on the fact that the CAP Sant Gervasi that was assigned to the claimant "corresponds to them by territorial scope".

4. On 12/04/2021, the Authority transferred the claim to the ICS so that within 15 days it could formulate the allegations it deemed relevant.

5. On 04/28/2021, the ICS made allegations by means of a letter in which it set out, in summary, the following:

"(...) As indicated in the document sent by the ICS to the interested party on 03/08/2020 in relation to the letter dated (...), its Service Center Primary school does not belong to the ICS but to Cap Sant Gervasi to which the interested party is assigned and corresponds to by territorial scope, likewise, the corresponding entity is the EBA Vallcarca. Likewise, the center whose traceability is requested by the interested party, Cotxeres, does not belong to the ICS, nor does it belong to the EBA Vallcarca, but is managed through the entity CSC Vitae".

6. Given the response of the ICS, on 26/05/2021 the Authority transferred the claim to the EBA Vallcarca, SLP so that within 15 days it could formulate the allegations it deemed relevant, requiring him to report on several points and provide documentation related to the subject of the claim.

7. On 06/03/2021, the EBA Vallcarca, SLP, received a response letter, which indicated the following:

- That "The EBA VALLCARCA is the entity responsible for data processing collected and declared by the affected (...)".
- That "the EBA VALLCARCA has its own computer application for the management of patients' clinical histories, IMO. This application has a formal authorization process that covers the permission system for the different accesses to its elements, by the different users.

The IMO administrator therefore authorizes each of the application access permissions to the different user profiles, with levels of access to information and personal data in relation to their professional functions and obligations .

The OMI also records and monitors all the activity of its users in accessing information or personal data, so that any access to data in the system, OMI, must be authorized by the administrator and remains registered and monitored, recording at all times the activity of all users of the system. That the IMO, in addition, is liable to share information of patients and users in the HC3 repository; depending on the Catalan Health Service (CatSalut), which is responsible for it.

CIS Cotxeres does not have access permissions to the OMI application. The administrator of the IMO has been able to verify that there are no unauthorized accesses or attempted accesses made by CIS Cotxeres or by unauthorized third parties through the IMO."

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- That "the communication from the Catalan Data Protection Authority regarding the present rights protection procedure is the first communication received by EBA VALLCARCA in relation to the request to exercise the right of access referred to.

The ICS alleges that it transferred the same to the Muntanya-Dreta Primary Care Service, in view of the fact that the CAP Sant Gervasi has assigned the person making the claim by territorial scope.

However, from the EBA VALLCARCA we have no record of having received the aforementioned request from the ICS or the Muntanya-Dreta Primary Care Service of access exercise".

- That "therefore, and by virtue of the information provided in this response letter, we understand that the access to the personal data of the lady (...) by CIS Cotxeres, should it have actually occurred, it must have been done through HC3, for which CatSalut is responsible."

8. In view of the response of the EBA Vallcarca, on 08/06/2021 the Authority required the ICS to provide the documentation certifying the entry into the EBA Vallcarca of the office of the ICS for which the request for access presented by the person making the claim had been forwarded to him.

9. On 06/22/2021, the Authority received the response letter from the ICS, through which it stated, as far as it is concerned, the following:

- That "Reviewing the documentation, it is observed that in the letter of response to the interested party there was a transcription error and moreover quite incoherent. He indicated that he referred his request to SAP Muntanya-Dreta because the CAP was Sant Gervasi. This was a transcription error. A confusion with the details of her co-worker, as they made the requests on time."
- That on 28/07/2020 "The request is submitted to CAP Vallcarca. Capture is attached". The response was accompanied by a screen printout of an email sent on 28/07/2020 by the Citizen Service Unit of the ICS to the EBA Vallcarca (User Service Unit of Primary Care Vallcarca-Sant Gervasi, with a copy to Primary Care Vallcarca-Sant Gervasi), by which the request for access made by the person making the claim was forwarded.
- That on 04/08/2020 the "CAP Vallcarca informs the Corporate C. of the referral to CatSalut. Capture is attached". The response was accompanied by a screenshot of an email sent on 04/08/2020 by the EBA Vallcarca (the same organic unit and email mentioned) to the Citizen Service unit of the ICS, where it states that the access request had been forwarded to the Catalan Health Service (hereafter, CatSalut), to consider that "we cannot trace access made from outside the centre". and that CatSalut had confirmed to them that "they are the ones who can do it", adding that: "when I have an answer I will let you know".

10. On 07/05/2021, the Authority requested the person claiming to clarify several questions, among them, which entity had sent him the email dated 06/08/2020, where he was asked to clarify whether his request for access referred to the medical history shared in Catalonia (hereinafter, HC3), or in the Primary Care clinical history; and if he had responded to the mail.

11. The period granted to the person making the claim has passed, without having received any written response from this person.

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 the RGPD, regarding the right of access of the interested person, establishes the following (the emphasis is ours):

"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 parties 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 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 will have 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 based on administrative costs for any other copy requested by the interested party. 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, article 12 of the RGPD states 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 (...).

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 (...)"

In relation to the above, 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 data controller 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 was the fact of not having obtained a response within the period provided for the purpose.

In this regard, the EBA Vallcarca, SLP has stated that it is the entity responsible for the treatment, given that it is the one that manages the Gervasi CAP to which the claimant is assigned, as well as his Primary Care medical history, which he accesses through a proprietary application (IMO).

From the documentation provided by the ICS on 22/06/2020, it can be inferred that on 28/07/2020 the EBA Vallcarca received, by referral from the ICS, a letter from the claimant, through which he exercised the right of access to certain personal data related to his medical history. Specifically, he requested the "traceability" of his clinical history (HC) for a certain period, a term used by the Department of Health and affiliated entities, referring to the accesses made to a HC.

In accordance with article 12.3 of the RGPD, the EBA Vallcarca 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 public administrations of Catalonia (hereinafter, 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).

Well, the EBA Vallcarca has not proven to have responded to the access request made by the person making the claim, neither within the one-month period provided for that purpose, nor subsequently.

Consequently, the claim, which was based on the failure of EBA Vallcarca to respond to the access request made by the claimant, must be upheld. This notwithstanding what will be said below regarding the substance of the claim.

4. Once the above has been established, it is necessary to analyze whether, in accordance with the precepts transcribed in the 2nd legal basis, access to the information requested by the person making the claim is appropriate in this case.

As has been progressed in the antecedents, on date (...) the claimant requested information on "medical history access by car company professionals" from (...) to (...), using for this a standardized form provided by the ICS entitled "request for the exercise of traceability".

Formulated the request in these terms, and also taking into account the statement in the antecedents section, it must be understood that its purpose was to obtain information about the people who provide service at the CAP Cotxeres who would have accessed their medical records from the EBA Vallcarca, the latter center of which she is a user. Thus, in the

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your request for access did not ask for information on all the ends provided for in article 15 of the RGPD, but, as far as is concerned here, that corresponding to:

"c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations."

First of all, it should be noted that this precept does not cover the right to know the identity of the employees of an entity (responsible for the treatment) who have accessed the data, and this because the required "communication" of data does not occur by the precept, since access by the person in charge's staff cannot be understood as such, since in this case the data do not leave their scope of action (you can consult the resolution issued in PT 21/2019 and the opinion CNS 8/2019 on the Authority's website www.apdcat.cat).

Another thing is that the entity, despite not having a legal obligation to do so, provides this information following the recommendation given in this regard by the G29 - integrated by 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-

However, this is not the case in which we find ourselves here, since, as has been explained, the CAP Cotxeres and the EBA Vallcarca are managed by different companies; and therefore by different data controllers. Therefore, if there is a "communication" of data, the person making the claim has the right to know "the recipients or the categories of recipients (art. 4.9 RGPD) to whom the personal data was communicated or will be communicated", precept that, it should be noted, it also does not require identifying the specific person to whom the data is communicated, but rather the category or category of recipients.

In this regard, the EBA Vallcarca has stated that CIS Cotxeres does not have permission to access its clinical history management application (OMI), and that it has verified that there are no unauthorized accesses or attempted accesses made by CIS Cotxeres or by unauthorized third parties through the IMO.

This is information that the EBA Vallcarca should have provided to the person claiming their access request, since they are obliged to respond even if they do not have the requested data. Having said that, it is not superfluous to add that the information that must be provided is related to any data communications from the HC of the person claiming that from the EBA Vallcarca could have been made to the CIS Cotxeres, and therefore, it should not only take into account eventual accesses to the OMI application, but also other channels of information transmission, such as e-mail, whenever such information is available.

In conclusion, and in accordance with the above, it is necessary to recognize the right of access of the person claiming to the information regarding the recipients or categories of

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08008 Barcelona

recipients to whom personal data from their HC have been communicated or are being communicated, specifically, if applicable, to CIS Cotxeres.

5. Having established the above, it must be said that it cannot be ruled out that CAP Cotxeres was able to access the claimant's clinical information found in its HC3, information that could have been incorporated not only by the EBA Vallcarca, but also by other health centers that have provided medical assistance to the claimant and that participate in the HC3 program.

The information on the claimant's eventual access to the HC3 from the CAP Cotxeres is information that the EBA Vallcarca does not have, since the person responsible for the HC3 file is the Department of Health. To obtain this specific information, the person making the claim should go to the Catalan Health Service, a body that, on behalf of the Department of Health, manages the care, among others, of the right of access to the HC3. The claimant can also obtain this information through the MY HEALTH channel (<https://catsalut.gencat.cat/ca/serveis-sanitaris/la-meva-salut/>).

6. 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 the protection of rights, the manager of the file 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 request the EBA Vallcarca so that, within 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the right of access of the person claiming, in the terms set out in the 4th legal basis. Once the right of access has been made effective in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must report to the Authority.

For all this, I resolve:

1. Appreciate the guardianship claim made by Mrs (...) against the EBA Vallcarca, SLP, for not having responded to her request for access, and recognize the right of this person to access the information referred to in article 15.1.c of the RGPD, in the terms indicated in the legal basis 4t.

2. Request the EBA Vallcarca, SLP so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of access exercised by the person claiming, in the form and scope indicated in the foundation of law 4th. Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.

3. Notify this resolution to the EBA Vallcarca, SLP 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,