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File identification

Resolution of the rights protection procedure no. PT 32/2021, petition against the Catalan Institute of Health.

Background

1. En data 15/03/2021 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, provinent de l'Agència Espanyola de Protecció de Dades (AEPD), una reclamació formulada per la senyora (...)(en endavant , the claimant) against the Catalan Health Institute (hereinafter, ICS), for the alleged neglect of his request to exercise the right of access, which he presented to this entity. The documentation sent by the AEPD included:

- A first letter of claim, presented by the person now claiming on 22/02/2021 before the AEPD, through which he stated that: *"they refuse to hand over my clinical history",* accompanied by some screen prints some conversations carried out through the e-consultation service of the ECAP application with health personnel of the CAP (...); as well as an access request submitted on 8/02/2021 to the EAP (...).

- A second letter presented by the now claimant on 03/03/2021 before the AEPD, complementary to the first, through which he stated the following:

"The CAP of (...) has not given me my medical history, only a summary. There's much more. And I want everything. There are many police reports. And other circuses that have set me up. And I want to have it, because I've lived it and it's mine.
- They have deleted all conversations from my personal page.
- They have forbidden me to go to the CAP. I don't have a private life. Everything is quiet for me hands
- Everyone is mistreating me.
- I don't know how to get out of this situation.
- I only know that they opened a legal process against me without my consent. And that I have to make myself sick so that they can get what they want."

This one

2. On 03/23/2021, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it deemed relevant.

3. On 03/24/2021, the Authority received a letter from the data protection delegate of the ICS, through which he formulated several questions about the content of the submitted documentation, to which he was given an answer through office dated 03/31/2021.

4. On 04/13/2021 the ICS made allegations by means of a letter dated 04/07/2021 from the EAP of (...), in which the following was set out, in summary:

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"The interested party submitted a request for a copy of the medical history on 02/08/2021 at EAP SAB at 12:45 with entry number (...) and we sent it to her via mail on 02/18/2021 at 09:00h as stated in the departure register with nº (...).

The computerized clinical record (ECAP) was printed in full and sent on the date credited above. The heading of all the history contained in it at the computerized level is a summary of it, the rest is detailed page by page and sent in a complete and truthful way.

We send a copy of ALL history and there is no modification of it. If you want to do a computer tracking study, you can check that there is NO alteration of the content sent (...).

We have NOT deleted any information from her medical history, we have only not deployed the "E-consult" conversations between the patient and the assigned doctor and nurse. In this allegation we provide them in image to those corresponding to the period of attention to our EAP."

The ICS accompanied its letter with the following documentation:

4.1. Copy of the request for access to the medical history with entry date 08/02/2021 in the Primary Care Service of the EAP (...), through which the person claiming only bid: *"my medical history of the last 5 years".* In the form used, check the box that indicated postal mail as the preferred channel to receive the answer.

4.2. Copy of the claimant's letter dated 22/01/2021, sent one month later (23/02/2021) by burofax to the CAP (...), through which he requested access to his clinical history in the following terms:

"The reason for this communication is that, as previously requested, the delivery of my clinical history has not yet been made effective as of today. I request to EXERCISE THE RIGHT OF ACCESS to the CLINICAL HISTORY... with special mention of the professionals who performed the care, with names and surnames and number of colleagues, interventions performed, diagnostic imaging tests, informed consents and other documents that contain data, evaluations in information of any kind on the patient's situation and clinical evolution..."

4.3. In the document titled "Response to claim 2021-(...)", the documentation that would have been given to the person making the claim is indicated:

o Clinical History Summary Sheet (which lists health problems, active medication, vaccines and IT) 1 sheet.
o Computerized Clinical History 13 sheets
o Laboratory results day (...)4 sheets
o Hospitalization discharge report from L'Hospitalet General Hospital dated (...)1 sheet

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o Transthoracic Echocardiography Report of the General Hospital of (...) date (...)1 sheet Total 20

sheets (...) screen prints of the conversations for E-Consulta (...)"

In this document, it is pointed out that a copy of the medical history sent to the claimant was sent, and, as far as it is now concerned, of the first sheet on which the departure record would be stamped. However, the Authority has noted that this documentation (the one mentioned in this section 4.3) is not among the documentation that the ICS has sent to the Authority.

4.4. Screenshots of 18 messages exchanged between the claimant and the assigned healthcare staff between 29/01/2021 and 16/02/2021 via the space
eConsulta accessible through the ECAP application.

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 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

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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 will have the right to be informed of the appropriate 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, 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.

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(…)"

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. To this one effect, the communication from the person in charge to the affected person of 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, Basic State Law 41/2002, of November 14, on Patient Autonomy (hereinafter, Law 41/2002) 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,*

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who can oppose 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, of Patient Autonomy and Rights to Information and Clinical Documentation (hereinafter Law 21/2000) 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, which they 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."

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. With regard to the reason for complaint made by the person making the claim, it should be made clear that, although in the first letter of claim he submitted on 02/22/2021 before the AEPD, he complained about the lack of response to his request for access *("they refuse to hand over my clinical history"),* in the second letter submitted to the AEPD on 03/03/2021, complained about the fact that he considered that the documentation provided was insufficient *("...solo un resumen. Hay mucho más. Y lo quiero todo..."),* with which statement he implied that after the date of presentation of his first written (22/02/2021) the ICS would have given him documentation of his medical history.

The latter agrees with the allegations made by the ICS in the hearing phase of the present procedure. Specifically, in the letter dated 04/07/2021 the EAP of (...) has indicated that: *"The interested party submitted a request for a copy of the medical history on*

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02/08/2021 at EAP SAB at 12:45 with entry number (...) and we sent it via mail on 02/18/2021 at 09:00 as stated in the departure register with nº (...)."

In fact, from the statements and the documentation provided, it is clear that, when the person now claiming submitted the letter of claim to the AEPD on 02/22/2021, the one-month period provided for by law had not yet ended to respond to the access request submitted on 08/02/2021. With which it was a premature claim. However, given the reason for the subsequent complaint, and by virtue of the principle of procedural economy, it is considered appropriate to make a pronouncement.

That being the case, it is necessary to elucidate whether the response given by the ICS to the person making the claim is in accordance with the precepts indicated in the previous legal basis.

In this regard, the ICS has stated that on 02/18/2021 it sent the claimant all the content of his medical history (background 4.3), as well as a printout of the messages exchanged between this person and the health personnel assigned to through the eConsulta space accessible through the ECAP application.

For his part, the person claiming has stated in the letter he submitted on 03/03/2021 before the AEPD, that the ICS has given him "a summary", a statement that does not agree with the statements made by the ICS, who has explained in detail the content of the medical history documentation that he would have given him.

In the aforementioned letter, the claimant states, following his complaint on what he considers to be a summary, that the ICS has not provided him with a copy of any police reports. Specifically and for what is of interest now, he points out that: *"The CAP of (...) has not given me my clinical history, only a summary. There's much more. And I want everything. There are many police reports. And other circuses that have set me up. And I want to have it, because I've lived it and it's mine (...) - They deleted all the conversations from my personal page."*

In this regard, it should be noted that the information referred to by the person making the claim, or at the very least, police reports and "conversations" on his personal page - which all seem to indicate that they would correspond to the messages exchanged through the eConsulta space -, do not form part of the content of a clinical history, in accordance with the health regulations that regulate its content. Specifically:

On the one hand, the art. 15 of Law 41/2002 establishes the following:

> *"1. The medical history must incorporate the information that is considered important for truthful and up-to-date knowledge of the patient's state of health. Any patient or user has the right to record, in writing or in the most appropriate technical support, the information obtained in all their care processes, carried out by the health service both in the field of primary care and specialized care.*
>
> *2. The main purpose of the medical history is to facilitate health care, recording all the data that, under medical criteria, allow the*

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truthful and up-to-date knowledge of health status. The minimum content of the clinical history must be the following:
a) The documentation relating to the clinical statistics sheet.
b) Entry authorization.
c) The emergency report.
d) History and physical examination.
e) Evolution.
f) Medical orders.
g) The interconsultation sheet.
h) The reports of complementary explorations.
i) Informed consent.
j) The anesthesia report.
k) The operating room or birth registration report.
l) The pathological anatomy report.
m) The evolution and planning of nursing care.
n) The therapeutic application of nursing.
ñ) The graph of constants.
o) The clinical discharge report.
Paragraphs b), c), i), j), k), l), ñ) io) are only required in the formalization of the clinical history when it is about hospitalization processes or it is arranged in this way. "

On the other hand, article 10 of Law 21/2000 determines the following:

"1. The medical history must have an identification number and must include the following data:
a) Identification data of the patient and of the assistance:
Name and surname of the patient.
Date of birth.
sex
Usual address and telephone number, in order to locate you.
Date of attendance and admission, if applicable.
Indication of origin, in case of referral from another care center.

Service or unit in which assistance is provided, if applicable.
Room and bed number, in case of admission.
Doctor responsible for the patient.
Likewise, when it comes to users of the Catalan Health Service and care is provided on behalf of this entity, the personal identification code contained in the individual health card must also be recorded.
b) Clinical care data:
Physiological and pathological family and personal history.
Description of the disease or current health problem and successive reasons for consultation.

Clinical procedures used and their results, with the corresponding opinions issued in case of specialized procedures or examinations, and also the interconsultation sheets.

Clinical course sheets, in case of admission.
Medical treatment sheets.
Informed consent form if applicable.
Information sheet provided to the patient in relation to the diagnosis and the prescribed therapeutic plan, if applicable.
Epicrisis or discharge reports, if applicable.
Voluntary discharge document, if applicable.
Necropsy report, if available.
In the case of surgical intervention, the operating sheet and anesthesia report must be included, and in the case of childbirth, the registration data.
c) Social data:
Social report, if applicable.
2. In hospital clinical records, which often involve more than one doctor or healthcare team, the actions, interventions and prescriptions made by each professional must be recorded individually.
3. Health centers must have a standardized clinical history model that includes the contents set out in this article adapted to the level of care they have and the type of service they provide."

According to the precepts transcribed, from which it is derived that the documentation referred to by the person making the claim (police reports, conversations) is not part of the content of his medical history, his complaint about the summary nature would not be justified of the documentation provided by the ICS in response to your request for access to your medical history due to not incorporating certain documentation.

Faced with this, the statements made by the ICS regarding the delivery of the entire clinical history to the person making the claim are plausible. The information on the content of each sheet provided fully complies with the mandatory content indicated by the health regulations.

Finally, in relation to the eConsulta messages, it is considered appropriate to point out that, although they are not part of the content of the medical history, this does not prevent the person making the claim from having access to them - as seems to be the case - , as they certainly contain your personal data. But it is necessary to insist on the idea that their access would not obey the request for access to the clinical history (to exceed its scope).

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For all this, I resolve:

1. Dismiss the guardianship claim made by Ms. (...) against the Catalan Health Institute.

2. Notify this resolution to the Catalan Health Institute 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,