

File identification

Resolution of the rights protection procedure no. PT 33/2021, referring to the Catalan Health Institute.

Background

1. On 16/03/2021 the Catalan Data Protection Authority received a claim made by Mrs (...) (hereafter, claimant) against the Catalan Institute of Health (in hereafter, ICS), for not responding to the request to exercise 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 processing of personal data and the free movement thereof (hereafter, RGPD). In the letter of complaint he stated the following:

"I requested the traceability of my medical history on 7/27/2020 and to date I have not received an answer."

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 04/01/2021, the response letter from the person claiming was entered in the Authority's register, which was accompanied by a letter from the ICS's Citizen Service Officer with exit registration dated 08/03/2020, from which it was inferred that on 07/27/2020 the claimant had submitted an access request to the ICS, which had as its object "traceability" of his clinical history. Specifically, the ICS stated the following:

"In relation to your letter of July 27, 2020, with registration number of entry (...), in which you requested the traceability of your medical history in the period covered (...), I inform you that your request has been referred to the Muntanya-Dreta Primary Care Service, since the Guineueta CAP to which you are assigned corresponds to them by territorial scope.

For more information:

(...)

4. On 07/04/2021, the Authority transferred the claim to the ICS - which manages the CAP Guineueta - so that within 15 days it could formulate the allegations it deemed relevant. In the transfer office, the ICS was expressly informed that once the aforementioned period had passed, the processing of the procedure would continue even if their allegations had not been received, in accordance with what is provided for in the article 117.3 of Royal Decree 1720/2007, of December 21, applicable where not opposed

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as provided for in the RGPD or in Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD).

5. The granted deadline has passed far too long, without any letter of objection from the ICS having been entered in the Authority's register.

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 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

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Request by electronic means, and unless it is requested to 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 ICS 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 it was the fact of not having obtained a response within the period provided for the purpose.

In this respect, it is not a disputed fact that on 27/07/2020 a letter from the person claiming was received by the ICS, through which he exercised the right of access to certain personal data related to his history clinic. 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.

Regarding the identity of the data controller, it should be noted that, according to the information published on the ICS corporate website regarding the Processing Activities Register (hereafter, RAT), the ICS is the 'entity responsible for the treatment regarding

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in the "File of patients treated in Primary Care centers of the Catalan Institute of Health", to which the CAP Guineueta belongs, assigned to the person making the claim. Given that the claimant's HC data would be included in the aforementioned file, the ICS would be the entity required to respond to the claimant's request for access.

In accordance with article 12.3 of the RGPD, the ICS 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 (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).

Well, the ICS 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 the purpose, nor subsequently. With respect to his lack of allegations, it should be noted that in the office of transfer of the claim, notified to the ICS on 04/07/2021, the Authority expressly warned him that once the 15-day period granted, the processing of the procedure would continue even if their documents had not been received.

allegations

Consequently, the claim, which was based on the ICS's lack of response 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. It is therefore necessary to analyze whether, in accordance with the precepts transcribed in the 2nd legal basis, the claimant has the right to access the data he requested.

First of all, it should be noted that the right of access recognized in article 15 of the RGPD, does not recognize the right of access to any information, but only to the personal data of the person exercising the right, as well as to the information indicated in paragraph 1 of this article, such as that referred to the purposes of the treatment, the categories of personal data, etc.

Among the information provided for in this section 1 that must be provided, there is, as far as it is concerned, the one corresponding to:

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

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Well, this information provided for in section c) would be the only one that would be related to the object of the access request made by the person making the claim.

Indeed, the claimant requested the *traceability* of his medical history (HC) corresponding to the period of time between (...) and (...), in reference to the access to his HC that would have performed during the indicated period. The request raised in these terms seems to refer to *all* the accesses made, that is to say, that also

requests would be made, for example, for the accesses made by the staff attached to the person in charge of the treatment. However, the right of access recognized in article 15 of the RGPD does not include access to this information, but only the reference to the accesses made *by recipient persons or categories of recipients to whom personal data has been communicated or is being communicated*, which has a more limited scope, therefore, at the outset, it must be made clear that this article does not require that the specific recipient of the communication be identified, therefore, it may be sufficient to identify a category of recipients (for example, the company that manages the server where the information is hosted).

Article 4.9) of the RGPD defines the concept of recipient as: *"the natural or legal person, public authority, Service or other organism to which personal data is communicated, whether or not it is a third party (...)."*

The key element is to be found in the reference to the existence of a data communication.

Although the RGPD does not contain a definition of what is to be understood by "communication", it seems clear that access by the person in charge's own staff cannot be considered as such, given that they are part of the person in charge.

Only when it leaves the area of responsibility can it be considered that we are dealing with a recipient to whom the personal data is "communicated" and, therefore, fitting into the concept of recipient.

Access by people who carry out their professional functions as an integral part of the entity responsible for the treatment (as an example, the different care professionals or administration and management of a health center), would not mean properly a "communication" for the purposes of the data protection regulations, since, in this case, the data of the affected person (the patient treated at the health center) do not leave the control and the scope of management of the person responsible. And consequently it would not be information that must be provided by virtue of the exercise of the right of access provided for in article 15 of the RGPD.

In conclusion, the right of access in article 15 RGPD does not include the obligation, for the person in charge, to communicate the identity of the specific people who, as staff of the entity responsible for the treatment, may have had access to the owner's personal data. This is without prejudice to the fact that, beyond the content of the right of access, the person in charge may provide this information voluntarily.

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On the other hand, the right of access does include data communications of the person making the claim that have occurred with respect to a recipient external to the person in charge of the treatment.

This would include informing, where appropriate, of the publication of data in the medical history shared in Catalonia of the person making the claim.

In accordance with the foregoing, with regard to the merits of the claim, the claimant's right of access to information relating to the recipients or categories of recipients to whom personal data has been or will be communicated should be recognized your HC.

5. 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 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 claimed ICS 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 Catalan Institute of Health, for not having responded to her request for access within the period established in the applicable regulations, and recognize the right of this person to access the information referred to in article 15.1.c of the RGPD, in accordance with what is stated in the 4th legal basis.

2. Request the Catalan Institute of Health 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 making the claim, in the form and scope indicated in the 4th right foundation. 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 Catalan Health Institute 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 term of

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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,

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