

File identification

Resolution of the rights protection procedure no. PT 45/2021, petition against the Catalan Health Institute.

Background

1. On 26/04/2021 it was submitted to the Catalan Data Protection Authority, by referral from the Commission for Guaranteeing the Right of Access to Public Information (GAIP), a claim made by Mrs (...) against the University Hospital of (...), managed by the Catalan Institute of Health, for the alleged neglect of the application for exercise of right of access to written complaints that other employees of the Hospital would have presented against him. Specifically, he noted the following:

"On March 19, 2021, I requested copies of some "letters" that according to the HR directorate (...) refer to some complaints against me. Although I am the main person involved, I am not authorized to know who the senders of the letters were or to know or see their content, because according to the management, this fact would violate the data protection law (...) these "letters" were the reason why I was expelled from the service of the hospital where I worked until now, on (...), after 19 years of seniority in the company, leaving me out of any defense due to not having any knowledge of the content of the writings."

The claimant provided a copy of the response letter from the ICS, dated 04/21/2021, by which the access request was denied based on the following:

"In response to your letter dated March 19, 2021, with registration number (...), where you state that, in the meeting held with the management of this hospital center last December 1, it was to your knowledge the existence of a series of letters, referring to some complaints about the development of your professional activity in (...) and of which delivery was not made, nor was it allowed to know the content nor the issuer (...)."

2. On 05/31/2021, this Authority transferred the claim to the ICS so that it could formulate the allegations it deemed relevant.

3. The ICS made allegations by means of a letter dated 06/22/2021, accompanied by various documentation, in which it set out, among others and for what is now of interest, the following:

"To Ms. (...) these copies were not given to him for the reason already stated in the reply mentioned above. As established in article 4 of Law 39/2015 on Common Administrative Procedure of Public Administrations, the following will be considered interested in the administrative procedure: "a) Those who promote it as holders of individual or collective rights or legitimate interests , b) Those who, without having started the

procedure, have rights that may be affected by the decision adopted in it, c) Those whose legitimate interests, individual or collective, may be affected by the resolution and are personified in the procedure as long as they are not issued a definitive resolution."

In this case, none of the previous cases exist for which we can consider Mrs. (...) as interested in an administrative procedure. In fact, it can be stated that not even an administrative procedure has been opened arising from the complaints presented by his co-workers, and since in no case has the processing of any administrative action been initiated as a result of . the complaints presented, no type has been adopted

of decision that may affect the interests of Mrs. (...), reason why it is not expected to be necessary to attend to your request.

Complaints submitted by co-workers to the (...)(...) were made simply for the purpose of informing about a certain situation and for the person responsible to try to find a solution to the problem, but in no case they were made in order to start any kind of procedure, and even more so when they were the own colleagues who expressed that they were not aware of these complaints to Ms. (...), in order to avoid major problems and to respect the privacy of each one of them (...)."

Among the documentation provided was the access request submitted by the person here claiming on 03/19/2021 before the ICS.

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 (hereinafter, the RGPD), referring to 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 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 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, paragraph 3 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 (...)"

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."

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3. Having set out the applicable regulatory framework, it is then necessary to analyze whether, in accordance with the precepts transcribed in the 2nd legal basis, access to the data in the terms requested by the person making the claim proceeds in this case.

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 owner of the data can find out which data about his person are the subject of 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 are found in article 23 of the RGPD, which must be provided for "through legislative measures" (art. 23.1 GDPR).

In the present case, the ICS justifies the denial of the access request made by the person making the claim, based on the consideration that this person does not have the status of an interested person - given that no administrative procedure was processed following the presentation to the ICS of the disputed written complaints -, and cannot exercise the right of access to the file, since this is recognized only to the interested persons (art. 53.aa LPAC).

In this regard, it should be noted that from the perspective of the right of access provided for in Article 15 RGPD, it is irrelevant whether or not the disputed complaint letters were part of an administrative file or that they are documentation presented in the framework of an administrative procedure. Nor is it relevant that the claimant has the status of a person interested in an administrative procedure, in the terms defined in article 4 of the LPAC.

What is relevant is that this is information about the person making the claim and that the ICS retains. Likewise, whatever reason or justification there is becomes irrelevant wielded by the person requesting access, given that article 15 does not condition the right of access to the concurrence of any specific circumstance, and consequently neither, to its invocation.

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Therefore, it must be concluded that the reason for denying access given by the ICS in its letter dated 04/21/2021, related to the fact that the person making the claim here did not have the status of an interested party in an administrative procedure, it does not fit right.

That being the case, it would be necessary to start from the recognition of the claimant's right to access their personal data.

However, in the present case there are unique circumstances that modulate the scope of the right of access exercised by the claimant, as explained below.

Indeed, it must be borne in mind that the right of access is not absolute and may conflict with other rights. In fact, the same article 15 of the RGPD provides in section 4 that the right to obtain a copy of the personal data subject to access must not negatively affect the rights and freedoms of third parties.

In this regard, it should be borne in mind that the controversial letters of complaint also contain personal data of the authors of the letters, such as: 1) identification data, and 2) data on facts, conduct or attitudes of these people, linked to their moods or physical states. That is why it will be analyzed separately below whether, in addition to his personal data, the claimant can access this data of third parties.

4.1.- On the access by the person making the claim to the identity of the people who formulated the letters of complaint.

At the outset, it is necessary to start from the premise that forms part of the right of access provided for in article 15 of the RGPD, access to information on the origin of the data (15.1.g). However, in the present case, the doubt arises because the information on the origin of the data involves revealing the identity of the workers who made the complaints before the ICS, with which the intended access falls into conflict with the right to data protection of these third parties.

In this regard, the Authority has issued several reports, which are published on its website, which address access to information provided by fellow workers of the person requesting access, which includes information related to these people, starting with his identity.

Thus, in the IAI report 48/2018 it is pointed out that the access by the claimant to the identity of these people could have harmful effects on labor relations. And in the IAI report 35/2019 it is added that when people are from the same work environment (such as co-workers of the person making the claim), the disclosure of what they can say or not say about the person making the claim could end up affecting negatively the labor relations of these people. In this second report, which was pronounced on a request for access to public information, es

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he emphasized the special importance in these cases of complying with the hearing procedure provided for in article 31 of the LTC, and knowing if there are personal circumstances or reasons that would justify preserving his identity. The IAI report 9/2021 should also be highlighted.

It is worth saying that in application of the regulations on data protection, although the transfer of an access request is not expressly provided for, nothing prevents it from being carried out in order to allow third parties to exercise their right to opposition in accordance with article 21 of the RGPD.

Regarding this, in the letter dated 06/22/2021 the ICS stated that: "(...) were the own colleagues who expressed that knowledge of these complaints was not given to Ms. (...), in order to avoid major problems and to respect the privacy of each of them".

With this statement, it seems that the ICS would allude to the exercise of the right of opposition by the workers who would have presented the disputed complaint letters. But this mere statement is insufficient for credentialing purposes. And apart from that, it must be taken into account that when the right of opposition is exercised, the request must be motivated, setting out the reasons related to the particular situation of the person exercising the right. And the truth is that the ICS has not indicated what would be the specific damage that these people could suffer.

In accordance with what has been stated, it must be concluded that the claimant's right to access information regarding its origin and, therefore, the identity of the people who provided it, cannot be limited.

4.2.- On access by the person making the claim to data on facts, conduct or attitudes linked to the mental or physical states of the people who formulated the letters of complaint.

It is necessary to start from the premise that, in exercising the right of access provided for in article 15 of the RGPD, a person can access the information that refers to his person, and this includes access to what is ' he said about her.

But, as noted, this right is not absolute, and may conflict with other people's right to data protection.

In the present case, it must be borne in mind that the information linked to facts, behaviors or attitudes that may have been described by the people undersigned in the complaint letters, which could be related to the consequences that this produces in the state of mind, psychological or physical of the people who declare, it is information from third parties.

At this point, the principle of data minimization contemplated in article 5.1.c) of the RGPD also applies, according to which personal data must

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be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".

This principle requires that the access granted is limited to the minimum data necessary to achieve the intended purpose - to provide the person claiming access to their personal data. And in this weighting of rights, it cannot be overlooked that the information of these third parties relating to their states of mind, are health data, and as such require special protection (art. 9 RGPD).

Well, well, this principle must lead to the prevailing in this case the right to data protection of these third parties and limit, therefore, the claimant's access to information that may refer to the employment situation, the state of mind, psychological or physical of the undersigned person of each written complaint.

Therefore, the set of circumstances that have just been outlined must lead to the denial of access to the statements, opinions or explanations made by the people who wrote the letters of complaint, linked or referred to their own employment situation, or to your state of mind, psychological or physical.

Regarding the rest of the information that does not conform to what has just been exposed and that these people have been able to provide in relation to the person making the claim, access must be facilitated.

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 the protection of rights, the manager of the file must be required so that in the term of 10 days make effective the exercise of right In accordance with this, it is necessary to require the ICS so that within 10 counting days from the day after the notification of this resolution, facilitate the person claiming access to their personal data in the terms that have been set forth in the 4th legal basis of this resolution, and provide a copy. This would include, apart from the information directly referring to the person making the claim, the following information:

5.1.- The origin of the claimant's data (identification of the people who would have provided them). The information on the origin of the data must also include information that third parties have been able to provide about the person making the claim, except for the statements, opinions or explanations made regarding their own employment situation, or their state of employment mental, psychological or physical (legal basis 4.2).

5.2.- Information on the recipients or categories of recipients of the claimant's data, as well as on the other ends provided for in article 15.1 of the RGPD.

Once the right of access has taken effect in the terms set out and the person making the claim has been notified, the ICS must report to the Authority within the same 10-day period.

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For all this, I resolve:

1. Partially estimate the guardianship claim made by Mrs (...) against the Catalan Institute of Health.
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 manner indicated to the foundation of law 5th. Once the right of access has taken effect, within the same period of 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 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,