

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

Resolution of the rights protection procedure no. PT 103/2021, petition against the Catalan Health Institute.

## Background

1. On 12/09/2021 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Catalan Health Institute (hereinafter, ICS).

The claimant provided the access request submitted on 06/09/2021 before the ICS by which he requested to "*exercise the right of data traceability*" in relation to the eConsulta messages in his clinical history of period between (...) and (...).

2. On 13/10/2021, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it deemed relevant.

3. The ICS made allegations through a letter dated 11/11/2021, in which a copy of the documentation that the ICS had sent to the claimant was attached (with the entity's exit registration date of 11/11/2021) responding to your request, specifically, an impression of the traceability of the messages exchanged, through the eConsulta space, between the person making the claim and the health personnel of the ICS, accompanied by an office in which they were informed that all accesses were justified.

4. On 23/11/2021, the person making the claim forwarded the answer given to the Authority by the ICS, on 11/11/2021, and expressed his dissatisfaction with the response received, indicating that "*The names of the people who have accessed my e-consultation do not appear*".

## 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 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, 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 for another two months*

*if necessary, taking into account the complexity and number of applications. 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 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. For this purpose, the communication of the person in charge to the person affected by 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.*

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*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."*

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 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 that initiated the present procedure for the protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

With regard to the alleged neglect of the right of access that is the subject of the claim, it is proven that on 09/06/2021, the ICS received a letter from the person claiming through which he exercised the right of access in relation to the traceability of the messages exchanged between this person and the health personnel assigned through the eConsulta space in their clinical history.

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 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.

Well, as can be seen from the documentation provided in this file, the ICS did not respond to the claimant's access request dated 06/09/2021, until 11/11/2021, i.e. well past the resolution deadline of one month

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provided for in the data protection regulations in order to comply with the request made by the person making the claim.

Consequently, since the claim was based on the lack of response to the request to exercise the right of access, the present claim should be upheld. This notwithstanding what will be said below regarding the substance of the claim.

4. On the merits of the claim, it must be highlighted that the ICS, although extemporaneously, provided the claimant with an impression of the traceability of the messages exchanged, through the eConsulta space, between this person and the assigned healthcare staff of the ICS, as can be seen from the description in the preceding 3rd.

However, according to the actions carried out, on 23/11/2021, the claimant sent a second letter to the Authority expressing his disagreement with the response received from the ICS, given that he had estimated his request dated 09/06/2021, but he had not provided him with the identity of the users who had accessed the eConsultation of their medical history.

In this regard, it should be borne in mind that the exercise of the right of access contemplated in the data protection regulations allows affected or interested persons to request and obtain from the data controller - in this case, the ICS - copy of your personal data that are the subject of treatment, including, among others, the information relating to those recipients to whom these data have been communicated or are expected to be communicated, as provided in article 15.1.c) of the 'RGPD. Given this, it must be specified that the accesses that the ICS's own staff may have made to carry out their professional functions as an integral part of the ICS -as is the case-, cannot be considered "communications of data" for the purposes of the data protection regulations, since the claimant's data did not leave the control, nor the scope of management of the ICS. Otherwise, those accesses to personal data that have occurred to recipients external to the data controller can be considered "communications". In this same sense, the Authority has pronounced (among others, in opinions CNS 8/2019, CNS 53/2019 and CNS 48/2021).

Therefore, access to the identity of the staff who have accessed the eConsultation of the person claiming, would not be part of the information that article 15.1 of the RGPD requires to give to the person making the claim, because the own staff of the ICS, which is responsible for the processing of the data, would not be a recipient to whom data would have been communicated personal data, for the purposes of article 15.1.c) of the RGPD. On the other hand, it is part of the right of access, that the person responsible for the treatment informs the person claiming as much if he has communicate your personal data to other recipients or categories of recipients external to the ICS, as if you have not done so.

In conclusion, this Authority considers that the ICS facilitated access to information in relation to the traceability of the eConsulta messages, but did not inform the person claiming whether or not they had communicated their personal data to other recipients or

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recipient categories. Given this, with regard to the substance of the claim, it is necessary to recognize the right of access of the person making the claim to be informed of whether or not communications of their personal data have occurred to other recipients or categories of external recipients in the ICS.

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 require the ICS so that, within 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the claimant's right of access, in the terms set forth 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. Estimate the guardianship claim made by Mr. (...) against the Catalan Institute of Health, for not having responded to their request for access within the period established in the applicable regulations, and recognizing the right of the person claiming to access the information to which article 15.1.c of the RGPD refers, in accordance with what is stated in the legal basis 4t.

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 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 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.

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Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

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