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File identification

Resolution of the rights protection procedure no. PT 107/2021, relating to the Catalan Health Institute.

Background

1. On 16/09/2021 he was admitted to the Catalan Data Protection Authority, through a transfer from the Commission for the Guarantee of the Right to Access to Information

Public, a writing by Mr. (...) (hereinafter, the person making the claim), for which he formulated, on behalf of his son, a claim for the alleged neglect of the right of access to personal data, which he had previously addressed to the Catalan Institute of Health (henceforth, ICS).

The claimant provided various documentation relating to the exercise of this right, including the following:

- The online application (reference (...)) presented by the claimant here through the generic processor, dated 07/31/2021, and addressed jointly to the SLT Department and the Catalan Health Institute (hereafter, ICS). In the request he requested:

"REQUEST FOR ACCESS TO PUBLIC INFORMATION IN THE AREA OF ITS FUNCTIONS OF THE DEPARTMENT OF SOCIAL RIGHTS IN ALL ITS COMPETENT AREA IN RELATION TO (...) IN RELATION TO ITS SERVICES RECOGNIZED BY ADMINISTRATIVE RESOLUTION, (...) OF THE FOUNDATION PERE MITJANS, AND OCCUPATIONAL THERAPY DAY CENTER (...). AND IN EVERYTHING THAT CONCERNS YOUR RE-ENTRY AND THOSE THAT HAVE BEEN ISSUED IN A GENERAL MANNER. WITHIN THE SCOPE OF THE EXERCISE OF THEIR FUNCTIONS OF THE CORRESPONDING ADMINISTRATIVE BODY IN RELATION TO (...)*PLEASE MAKE ME A COPY OF ALL ELECTRONIC MAILS, WHATSAPP MESSAGES AND ALL TYPES OF TELEPHONE MESSAGE SERVICES ISSUED BY THE MINISTRY OF HEALTH AND THE INSTITUTO CATALAN DE LA SALUD OF ALL ITS ADMINISTRATIVE UNITS AND DELEGATIONS, BETWEEN MARCH 12, 2020 AND JULY 31, 2021 AND THOSE THAT ARE ISSUED AFTER 07/31/2021."

- The document entitled "Communication dated 08/06/2021, from the General Directorate of Personal Autonomy and Disability, by which it is communicated that the request for access to public information with code of procedure (...) ((...))". In this respect, they announce that they have transferred the request to the SLT Department.

The document identifies the matter as "Subject: Access to electronic mails, WhatsApp messages, and other types of telephone messaging services, in the exercise of their functions in relation to (...)."

- The document, dated 08/30/2021, which has the title "Communication of extension of the period to resolve the request for access to public information, presented by DEPARTAMENTO DE SALUD, INSTITUTO CATALA DE SALUD, con code trámite (.. .)- (...)".

In said document, the Coordinator of Transparency, Access to Information and Good Governance of the Department of Health, communicates here claiming that the deadline to resolve the request is extended by 15 days.

- The "Resolution for which the request for access to information is not accepted public with procedure code (...)", dated 09/14/2021.

2. Given that the request to exercise the right of access presented by the person here claiming (31/07/2021) was addressed to two different entities, the Department of SLT and the ICS, and that in the his subsequent claim complains that neither of the two entities responded to his request, this Authority opened two files for the protection of rights, one for each claimed entity. On the one hand, the rights protection procedure no. PT 106/2022 referred to the Department of SLT, which has already been resolved by this Authority (10/03/2022), and, on the other hand, the present rights protection procedure no. 107/2022, referring to the ICS.

3. On 10/25/2021, as part of the present procedure, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it deemed relevant.

4. The ICS made allegations by means of a letter dated 02/24/2022, in which it set out, in summary, the following:

- That "since 2007, both the person concerned and his wife have provided on different occasions the necessary documentation that accredits the guardianship of the child (...) and therefore they should not present it again".
- That "neither phone calls nor mobile phone messages, whether SMS or Whatsapp, are recorded, and regarding emails they are not kept for a significant time due to the small amount of space the devices have, which is why they currently do not have any to be able to contribute".
- That "from the Citizens' Attention Area of the Corporate Center the people involved were contacted, all the available documentation was looked at and the ICS's Legal Advice was consulted".

5. On 03/04/2022, a request for information is made to the Department of Health in relation to rights protection procedure no. PT 107/2022, so that

report on whether the request submitted on 31/07/2021 (no. (...)) which identified the Department of Health and the ICS as recipient entities, once received by the Department of Health, was also sent to the ICS. Likewise, it is required to report on whether, as provided for in the resolution of the Department of Health dated 09/14/2021, the request was transferred to the ICS so that it could resolve it.

6. On 28/03/2022, the Department of Health responded to the request for information, and states that it is not aware that the Department had sent the request submitted on 31/07/2021, nor the resolution of the Department of Health dated 09/14/2021.

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 another two months if necessary, taking into account the complexity and the 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:

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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.

(...)"

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.

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. It is worth saying that this term can be extended by another 2 months (3 in total), taking into account the complexity or number of requests.

In this respect, reference must be made to the fact that, from the beginning, the claimant's request is treated as a single request, and is processed by Department of SLT as a request for the right of access to information provided for in the

Law 19/2014, of 29 December, on transparency, access to public information and good governance (hereafter, LTC). Regarding this, indicate that in the communication relating to the extension of the deadline to resolve the request, issued on 30/08/2021, by the Coordinator of Transparency, Access to Information and Good Governance of the Department of Health, it is identified expressly that the entities to which said request is addressed are the SLT Department and the ICS. Likewise, it is recorded that the Department of SLT, on 14/09/2021, issues a resolution in relation to the request made by the person claiming against the Department of SLT and the ICS, in which it rejects access to the information requested by the herein claimant under the prism of the LTC. In relation to this, it argues that the request should be processed as a right of access under Article 15 of the RGPD, as the requested information refers to personal data of the applicant's child, or as a right of access to the file provided for in article 53.1.a) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC). And it is in the dispositive part where it decides to transfer the request to the bodies of the entities "indicated in the request itself that have been able to intervene in the management of the case in question, so that they resolve it in accordance with the provisions of the regulations of personal data protection and the common administrative procedure."

However, as reported by the Department of SLT in response to the request for information formulated by this Authority, the Department did not manage to transfer said request to the ICS so that it could resolve it as a right of access of article 15 of the RGPD. At least, it is unquestionable that the ICS has been aware of the content of said request, as it has been forwarded to it by this Authority in the context of the present claim, and at the time when the present resolution is issued, it is not on record that the ICS has given any response to the person making the claim. Therefore, the truth is that the person making the claim submitted his application through the generic processor, which is made available by the Administration of the Generalitat de Catalunya, addressed both to the Department of SLT and to the ICS, and that neither entity gave a particular response to said request, under the prism of data protection regulations.

4. Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms that request of the person making the claim.

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 his own personal data (or those of the person he represents) that are 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 other detailed information in article 15.1 of the RGPD. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition. That's why the

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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 can be found in article 23 of the RGPD, which must be foreseen "through legislative measures" (art. 23.1 RGPD).

It should also be noted that 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.

In accordance with this, the right of access to personal data recognized in article 15 of the RGPD means that the person making the claim here would have the right to access, in any case, the information that could be contained in an eventual email or mobile phone message sent by the ICS containing your personal data or that of your child, and a copy of the same. This, notwithstanding that any of the limitations provided for in article 23 of the RGPD may apply.

In relation to what was stated, and despite the fact that the entity pointed out in its demonstrations formulated in the hearing procedure that the request for the right of access would be denied due to the non-existence of the information that was requested there, the truth is that the interested person has the right to receive a response from the data controller to the your request for the right of access, without prejudice to the fact that in this response the entity may indicate that it does not have the information requested in exercise of the right of access, or that the access does not proceed due to concurrence of any of the limits of article 23 of the RGPD.

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 claimed entity so that, within 10 counting days from the day after the notification of this resolution, it proves that it has responded to the request for the right of access presented by the claimant in accordance with data protection regulations. 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 give an account to the Authority

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against the Catalan Health Institute.
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 noted in the foundation

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of law 5th 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](http://www.apd.cat)<http://www.apd.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,