

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

File identification

Resolution of the rights protection procedure no. PT 114/2021, petition against the Sant Joan de Déu Health Park.

Background

1.- On 28/09/2021 the Catalan Data Protection Authority received a letter from Ms. (...) (hereinafter, the claimant), for which he formulated a claim for the alleged disregard of the right of deletion, which he had previously exercised before the Sant Joan de Déu Health Park (hereinafter, PSSJD). Specifically, in his claim, the claimant indicated that on 08/04/2021 he had asked the PSSJD to delete his clinical history at the Prat de Llobregat Mental Health Center -managed by the PSSJD-, and that this entity he had responded on 05/05/2021 denying his request, a response with which the person claiming here showed his disagreement.

The claimant provided various supporting documentation of the exercise of his right, as well as the response given to him by the PSSJD.

2.- On 10/25/2021, the Authority forwarded the claim to the PSSJD's data protection delegate, in order for him to respond within one month, and to communicate this response to the 'Authority.

3.- On 11/17/2021 the Authority received the statement of allegations from the PSSJD, through which it pointed out, in essence, that, as the person had been informed at the time claimant, article 12 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, established the retention periods for the clinical history, periods that in the case of the person claiming here had not yet elapsed since his discharge from the clinic had been registered on 03/08/2017, which is why the deletion did not proceed alone tendered

The claimed entity accompanied its letter of copy of the numerous letters that the PSSJD had addressed to the claimant in response to the various requests that it had made over time in relation to its medical history. Likewise, the PSSJD also provided the letter that, on the occasion of the guardianship claim, it had addressed to the claimant on 12/11/2021 (via duly encrypted email) setting out again and in detail the reasons that led the entity to dismiss

your request for deletion of medical history.

4.- In view of the response given by the claimed entity, on 03/12/2021 the Authority sent a letter to the person claiming to express, if this was the case, their eventual disagreement with the same , expressly warning her that, once

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

after the 10-day period granted without having made any statement, it would be considered that the claimed entity had satisfactorily resolved its deletion request.

The period granted has passed, without the person making the claim presenting any letter of disagreement to the Authority.

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.- The claim that is resolved here was formulated with respect to a request to exercise the right of deletion that had been presented to the PSSJD on 08/04/2021, a right regulated in the article 17 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27 relative to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, the GDPR):

"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:

- a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
- b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;*
- c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;*
- d) personal data have been treated unlawfully;*
- e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;*
- f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.*

3. Sections 1 and 2 will not apply when the treatment is necessary:

- a) to exercise the right to freedom of expression and information;*
- b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission*

- carried out in the public interest or in the exercise of public powers conferred on the person in charge;*
- c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;*
 - d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or*
 - e) for the formulation, exercise or defense of claims.*

On the other hand, the health legislation applicable to the case, specifically, article 12.4 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the documentation clinic, in its wording given by Law 16/2010, of June 3, amending Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation, establishes, for what is of interest here, the following in relation to the conservation of the clinical history:

"4. The following documentation must be kept from the clinical history, together with the identification data of each patient, for at least fifteen years from the date of discharge of each care process:

- a) The informed consent forms.*
- b) The discharge reports.*
- c) Surgical reports and birth registration.*
- d) Data relating to anesthesia.*
- e) The reports of complementary explorations.*
- f) The necropsy reports.*
- g) Pathological anatomy reports.*

"5. The digitization processes of the clinical history that are carried out must facilitate access to the clinical history from any point in the National Health System. To this end, the mechanisms must be established to make possible, through the individual health card, the link between the clinical histories that each patient has in the bodies, centers and services of the National Health System, and that allow healthcare professionals access to clinical information and the exchange of said information between the healthcare facilities of the autonomous communities, in accordance with the provisions on personal data protection.

"6. The documentation that makes up the clinical history not mentioned in section 4 can be destroyed once five years have passed from the date of registration of each care process.

7. Notwithstanding what is established in sections 4 and 6, the documentation that is relevant to care effects, which must incorporate the document of

advance wishes, and the documentation that is relevant, especially for epidemiological purposes, research or organization and operation of the National Health System. In the processing of this documentation, the identification of the affected persons must be avoided, unless anonymity is incompatible with the purposes pursued or the patients have given their prior consent, in accordance with current regulations on Protection of personal information. Clinical documentation must also be kept for judicial purposes, in accordance with current regulations.

8. The decision to keep the clinical history, in the terms established by section 7, corresponds to the medical management of the health center, at the proposal of the doctor, with the prior report of the unit in charge of managing the clinical history in each center. This decision corresponds to the doctors themselves when they carry out their activity individually.

As has been made clear in the antecedents, the PSSJD responded in time to the request made by the claimant here, which focused his claim on the content of the response that the entity had given him, in the meaning of denying him the deletion of the information contained in his clinical history of the Mental Health Center managed by the PSSJD.

As indicated in the antecedents, the PSSJD had responded to the claimant here by denying his request for deletion as the terms prescribed by the health regulations transcribed above had not passed, since his discharge had been registered on 08/03/2017.

On the occasion of the filing of the claim, the PSSJD addressed a new letter to the claimant on 12/11/2021 (of which he provided a copy to the Authority) explaining again the reasons that justified the non-deletion of their data in the medical history until 15 years have passed since the date of registration of the assistance process, and the claimant has not responded to the Authority, when on 03/12/2021 it sent a letter to the effect that it stated, if it was the case, his possible disagreement with the content of the last letter sent to him by the PSSJD, and expressly warned him that if he did not make any statement against it within 10 days, it would be considered that the claimed entity had resolved satisfactorily your request in relation to your right to deletion..

Regarding the response of the PSSJD for not attending to the request for deletion of data from the claimant here, it should be noted that, indeed, the previously transcribed health legislation sets the retention periods for the documentation containing the patient's clinical history, which may be 5 or 15 years, depending on the type of document or evidence in question. The same precept also provides that this conservation period can be higher in certain cases and conditions. Well, the reasons given by the PSSD for not proceeding with the deletion of the clinical documentation of the person claiming here would be in accordance with the provisions of the health legislation. To the above we must add the fact that the person making the claim here has not shown his disagreement with the last letter sent to him by the PSSJD on 12/11/2021 explaining again the reasons why the

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

deletion that he had requested, as requested by this Authority in case he was not satisfied.

In short, given that the PSSJD responded within the time limit to the request made by the claimant here and that its response conformed to that prescribed by the data protection regulations and the health legislation applicable to the case, the claim must be dismissed .

Therefore, I resolve:

1. Dismiss the guardianship claim made by Ms. (...) against the Sant Joan de Déu Health Park.
2. Notify this resolution to the Sant Joan de Déu Health Park. and the claimant.
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 February 20, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can submit, on an optional basis, appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29 /1998, of July 13, governing the contentious administrative jurisdiction.

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