

File identification

Resolution of the rights protection procedure no. PT 131/2021, urged by Mr. (...) against the Mental Health Center of Nou Barris Sud.

Background

1. On 02/11/2021, the Catalan Data Protection Authority received a claim from Mr. (...) (henceforth, the claimant) against the Nou Barris Sud Mental Health Center (henceforth, CSMA), for not responding to the request to exercise the right of access, which is foreseen 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 circulation of these (hereinafter, RGPD).

Specifically, the claimant complained that on 10/02/2021 he exercised the right of access to his data before the CSMA, through the form "*Petición de informe assistencial por el interesado*", of which he provided a copy, and in which he asked:

Request a medical report with the aim of presenting it to a psychologist private ". (...)
and "*Request entry authorization report involuntary , revelation of who My parents were seeing a psychiatrist , interview with my parents in August 2018 by this center and the psychiatrist (Mr. X) .*

And that in response to the aforementioned request, the center had limited itself to handing him a report issued by said psychiatrist on 06/05/2018, of which he provided a copy, stating in this regard that "*the response I received it was a letter dated in 2018 from a former psychiatrist who treated me in which he related information that had nothing to do with what I requested formally in the center .*"

2. By official letter dated 12/10/2021, notified on 01/05/2022, the claim was transferred to the CSMA Nou Barris Sud, so that within 15 days it could formulate the allegations it wanted relevant

3. On 01/20/2022, the Authority received the CSMA's statement of objections through which the following was argued, with regard to the object of the claim that concerns us:

- "*In February 2021, the user requested a report by a private psychologist and the request for involuntary admission in 2018 by the parents and Dr. (Mr. X) . We do not have any type of report or referral to the emergency room, the patient was taken to the emergency room of the Vall d'Hebron hospital by the EMS and the FOP. The user signs the collection of the report the following days, this report (that is, the one dated 06/05/2018 by Dr. (Mr. X) to which reference has been made before) is the last one that was carried out in 2018, since he then abandoned the follow-ups and after 6 months the story was closed.(...) "*
- "*As of today, we have not received any request for access to your medical history ."*

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 Catalan Data Protection Authority.

2 . Article 15 of the RGPD, regarding the right of access of the interested person, provides the following:

"1. The interested party will have right to obtain from the person in charge of the treatment confirmation if they are processing or not data personal that _ concern and, in such case, right of access to the data personal and next information :

*a) the purposes of the treatment ;
b) the categories of data personal in question ;
c) the recipients or the categories of recipients to whom they will or will be communicated data communicated _ personal , in particular recipients in third parties or organizations international ;
d) if possible , the expected data retention period personal or, if not possible , the criteria used to determine this period;
e) the existence of the right to request the rectification or deletion of data from the person in charge personal data or the limitation of data processing personal relating to the interested party , or to oppose said treatment ;
f) the right to file a claim before a control authority ;
g) when the data there are no personal ones obtained from the interested party , anyone available information about its origin;
h) the existence of decisions automated , 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 consequences provided for by dicho treatment for the interested party .*

2. When they will be transferred data personal data to a third country or an international organization , the interested party will have right to be informed of the guarantees appropriate under article 46 relating to the transfer . _

3. The person responsible for the treatment will provide a copy of the data personal object of treatment . The person in charge may perceive by anyone another copy requested by the interested party a canon reasonable based on administrative costs . When the interested party present the request by media electronic , and unless it 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 affect negatively to the rights and freedoms of others ."

Also, regarding the rights contemplated in articles 15 to 22 of the RGPD, article 12, sections 3, 4 and 5 of the RGPD establishes the following:

"3. The person responsible for the treatment will facilitate the interested party information related to sus 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 . Dicho plazo podra extend 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 of these extensions within one month of receipt of the request , indicating the reasons for the delay . When the interested party present the request by media electronic , the information will be provided by media electronic when be possible , unless the interested party request that it be provided in another way.

4. If the data controller does not comply with the request of the interested party , the will inform yes delay , no later than one month has passed since the receipt of the request , the reasons for its non - action and the possibility of presenting a claim before a control authority and take legal action .

5. The information provided under articles 13 and 14 as well as all communication and anyone performance carried out under articles 15 to 22 and 34 will be entitled free _ When the requests they are manifestly groundless or excessive , especially due to him character repetitive , the person in charge may :

a) charge a fee reasonable based on administrative costs faced to facilitate information or communication or perform the action requested , or

b) refuse to act in respect of the request .

The person responsible for the treatment will bear the burden of proving character manifestly groundless or excessive request . _

(...)"

Apart from the previous regulation, in the case analyzed here, it is also necessary to take into account the applicable health regulations. Specifically, the Basic State Law 41/2002, of November 14, on Patient Autonomy establishes in its article 18 the right of access to the clinical history in the following terms:

"Rights of access to the clinical history

1. The patient has the right of access, with the reservations indicated in section 3 of this article, to the documentation of the clinical history and to obtain a copy of the data contained therein. Health centers must regulate the procedure that guarantees the observance of these rights.

2. The patient's right of access to the clinical history can also be exercised by duly accredited representation."

3. The patient's right of access to the clinical history documentation cannot be exercised to the detriment of the right of third parties to the confidentiality of the data contained therein collected in the patient's therapeutic interest, nor to the detriment of the right of professionals who participate in its preparation, who can object to the right of access to the reservation of their subjective annotations.

4. Health centers and private practitioners must only provide access to the medical records of deceased patients to people who are related to them, for family or de facto reasons, unless the deceased has expressly prohibited it and be accredited in this way. In any case, a third party's access to the medical history motivated by a risk to their health must be limited to the relevant data. Information that affects the privacy of the deceased or the subjective notes of professionals must not be provided, nor that harms third parties."

For its part, article 13 of Catalan Law 21/2000, of December 29, on Patient Autonomy and Rights to Information and Clinical Documentation determines the following:

"Rights of access to the clinical history

1. With the reservations noted in section 2 of this article, the patient has the right to access the medical history documentation described in article 10 , and to obtain a copy of the data contained therein. It is up to the health centers to regulate the procedure to guarantee access to the clinical history.

2. The patient's right of access to the documentation of the clinical history can never be to the detriment of the right of third parties to the confidentiality of their data appearing in the aforementioned documentation, nor of the right of the professionals who have involved in the preparation of this, who can invoke the reservation of their observations, appreciations or subjective notes.

3. The patient's right of access to the clinical history can also be exercised by representation, as long as it is duly accredited."

In relation to all of the above, article 16 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 exposed the applicable regulatory framework, it is then necessary to analyze whether the CSMA's response complied with the right of access exercised by the person making the claim, as the claim was based on the failure to provide the requested information.

In this regard, it is certified that on 10/02/2021 the claimant submitted a request to the CSMA, in which he requested, on the one hand, a " *care report with the purpose of presenting it to a psychologist private* " (...) and, on the other hand, access to " *the entry authorization report involuntary , revelation of who I was seeing a psychiatrist for my parents , interview with my parents in August 2018 by this center and the psychiatrist (Mr. X)* " .

And it is also proven in the actions, in accordance with the statements made by both parties, that in response to said request for access, the CSMA delivered to him, a few days later, a copy of a report dated 05/06/ 2018 by the psychiatrist Dr (Mr. X) who was visiting him, which did not refer to any of the requested ends relating to the month of August 2018.

Having said that, it is necessary to analyze below whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms requested by the person making the claim is warranted.

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, the origin of the data subject to treatment when not have obtained directly from the interested party, as well as the

rest of the information detailed in article 15.1 of the RGPD, without further limitations than those that may derive from rules with legal status, in accordance with article 23 of the RGPD, and of the limitations that may arise from the existence of rights of third parties.

In addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the controller a copy of the document containing the personal data subject to processing, in respect of which access has been requested.

At this point it must be specified that the right of access set up in article 15 of the RGPD does not, therefore, cover the right to obtain certificates or reports that must be drawn up expressly to respond to a request with this purpose. That is to say, the preparation of a medical report exceeds the concept of the right of access, given that it would not be information that is the subject of treatment by the centre. Therefore, without prejudice to the fact that the person claiming in his role as a patient can request the issuance of a medical report to the person responsible for monitoring his health status, it is necessary to rule out that said request is covered by the exercise of the right of access provided for in article 15 of the RGPD.

Having said that, it is necessary to remember below the allegations made by the claimed entity in the hearing procedure, to justify its action in the face of the claimant's request for access:

"In February 2021, the user requests a report by a private psychologist and the request for involuntary admission in 2018 by the parents and Dr. (Mr. X) . We do not have any type of report or referral to the emergency room, the patient was taken to the emergency room of the Vall d'Hebron hospital by the EMS and the FOP. The user signs the collection of the report the following days, this report is the last one that was carried out in 2018, since then he abandoned the follow-ups and after 6 months the history was closed." (...) "As of today, we have not received any request for access to your medical history ."

Faced with these manifestations, and with regard to the rest of the requests made by the person making the claim, the following considerations must be made:

First of all, it must be specified that the right of access set up in Article 15 of the RGPD covers, as has been said, the right to know whether or not personal data is being processed by the person responsible for treatment, that is to say, whether or not the person in charge has the data in respect of which the right of access is exercised. Therefore, and with regard to the case analyzed here, the person making the claim here had the right to know the fact that the center did not have information regarding any of the requested ends, since this information is part of the right of access , it should have been provided to the person making the claim.

Likewise, it should be borne in mind that the right of access also includes the right to know the data communications made to third parties, and that therefore, the claimed entity should have also responded to the request regarding the communication to third parties of your data.

Lastly, and with regard to the statement made by the claimed entity to the effect that *" As of today, we have not received any request for access to your medical history ."*, it must be specified that, apart from the fact that the requested information would indeed form part of the patient's clinical history in accordance with the definition established in art. 9.1 of Law

21/2000 "(...) *collects the set of documents relating to the care process of each patient while identifying the doctors and other care professionals who have intervened* ", which in accordance with the precepts transcribed in the foundation of 2nd law relating to health legislation, the person claiming here also had the right to access it, without the need to indicate the file or treatment in which the information he wanted to access was formally found, because in no case does it constitute a requirement of the right of access.

In short, in view of all the above, the present claim for the protection of the right of access should be considered, given that in the present procedure it has been proven that the person making the claim exercised before the CSMA the right of access with respect in the following personal data " *the entry authorization report involuntary , revelation of who I was a psychiatrist to my parents , interview with my parents in August 2018 by this center and the psychiatrist (Mr. X) "* , and it is also proven that with the response carried out by the claimed entity it was not done effective the right of access exercised.

4 . 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, it is necessary to request the CSMA so that within 10 days from the day after notification of this resolution, exercise the claimant's right of access, providing him with the information provided for in article 15 of the RGPD, as well as a copy of all the data personal information related to what you request - unless an exception applies to those provided for in art. 23 of the RGPD, and in article 13 of Law 21/2000-. And specifically, in order to provide you with the information it has or deals with in its files relating to:

- the authorization or request for involuntary entry that would have been made during the month of August 2018, also that information derived from other centers, to which the claimed entity refers in its allegations.
- the communication of data of the person claiming here to third parties, to which your request refers.
- the information available regarding the interview that would also have been held during the month of August 2018, by the then psychiatrist of the claimant, with his parents.

Likewise, and in the event that the CSMA does not have the requested information, it is necessary to communicate this to the person making the claim within the same period, indicating the reason.

For all this, I resolve:

1 . Estimate the guardianship claim made by Mr. (...) against the Mental Health Center of Nou Barris Sud.

2 . Request the Mental Health Center of Nou Barris Sud so that, within 10 counting days from the day after the notification of this resolution, make effective the right of access exercised by the person claiming in the terms set forth in the foundation of law 4th. 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 Mental Health Center of Nou Barris Sud and to the person making the claim.

4 . Order the publication of the Resolution on the Authority's website (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 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, regulating administrative contentious jurisdiction.

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

The director,

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