

File identification

Resolution of the rights protection procedure no. PT 134/2021, relating to the Department of Health.

Background

1. On 11/08/2021, a letter from Mr. (...) (hereinafter, the person claiming), 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 Health Service of the Department of Health (hereinafter, Department of SLT).

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

- The online application (reference (...)) submitted by the claimant here through the generic processor, dated 10/26/2021, and addressed to the Catalan Health Service, of the SLT Department. In the request he requested:

"REQUEST FOR ACCESS TO INFORMATION WITHIN THE SCOPE OF ITS FUNCTIONS OF THE CATALAN HEALTH SERVICE, IN CASE OF AREAS OF COMPLEXITY CONCERNING BOTSTRE THE ENTRY AND COMPLEX CASES, AND THOSE THAT THEY HAVE BEEN ISSUED GENERALLY. WITHIN THE SCOPE OF THE EXERCISE OF ITS FUNCTIONS OF THE ADMINISTRATIVE BODY CORRESPONDING TO THE ASPB, PLEASE PROVIDE ME A COPY OF ALL CORPORATE ELECTRONIC MAILS, WHATSAPP MESSAGES AND ALL TYPES OF TELEPHONE MESSAGE SERVICES ISSUED BY THE CATALAN INSTITUTE OF HEALTH, BETWEEN MARCH 12 OF 2020, AND ON JULY 31, 2021 AND THOSE THAT ARE ISSUED LATER THE DATE OF 07/31/2021.

IN RELATION TO THE CONTENT OF THE REQUEST, THIS PART MAKES THE FOLLOWING CLARIFICATION, FOR A GOOD UNDERSTANDING OF THE REQUEST MADE. IT IS IN RELATION TO THE CASE OF (...) IN ALL REGARDS TO ITS CONTEXT AND CONTENT IN A GENERAL WAY. FROM THE REQUESTED DATES. ENTER ADM."

- The communication from the Coordinator of Transparency, Access to Information and Good Governance of the SLT Department, dated 10/28/2021, through which Mr. (...) that, in relation to the reference request (...), *"the file of your request has been accumulated in the file (...), given that both requests are substantially identical or intimately connected, and, in addition, they have to be resolved by him. (...) In this way, both requests will be processed together and will be subject to a single resolution."*

- The Resolution of the Technical Cabinet of the Department of SLT, dated 29/10/2021, by which the request for access to public information with the code (...) related to the file (...).

In said resolution, the decision to reject the request is based on two main arguments. On the one hand, the entity argues that:

"A. The information object of this request does not have the condition of public information subject to the right of access, because it refers to an individual person as a user of social and health services. The information requested has, therefore, the condition of information specially protected by the personal data protection regulations. (...)

And from this perspective, access to this information must be resolved in accordance with the regulation of the right of access established by the legislation on the protection of personal data, as provided for in article 24.3 of Law 19/2014."

On the other hand, that:

"B. On the other hand, the information requested refers to administrative procedures and files, in which the applicant has the status of an interested person, due to his family relationship with the person about whom the requested information relates.

In the files that are still in progress, the first additional provision of Law 19/2014, in its point 1, establishes that: The access of the interested parties to the documents of the administrative procedures in process is governed by what determines the legislation on legal regime and administrative procedure.

And, with a general character, article 53.1.a) of Law 29/2015, of the Common Administrative Procedure of Public Administrations, establishes the right of a person who has the condition of being interested in an administrative procedure to access and obtain a copy of the documents contained in the aforementioned procedures."

In the antecedents of said resolution of the Technical Cabinet of the Department of SLT, it is stated that the processing of four requests under the same procedure has accumulated, which the claimant here had addressed to four different entities, and, which are all resolved with a single resolution. Specifically, the requests that are processed under the same procedure, and that are resolved with the resolution of the Technical Cabinet of the Department of SLT, are those that the claimant presents against the following entities: to the ICS (single no. application (...)), to the Consorci Sanitari de Barcelona (application no. (...)), to the Catalan Health Service (application no. (...)), and to the Agency of Public Health of Barcelona (application no. (...)).

2. Given that the claim presented by the claimant against the resolution, dated 10/29/2021, is directed jointly against the ICS, the Barcelona Health Consortium and the Catalan Health Service, this Authority has opened three files for the protection of rights, one for each claimed entity. In this resolution, the claim referred to the Catalan Health Service, from the SLT Department, will be the subject of analysis. Claims relating to

two other claimed entities (the ICS and the Consorci Sanitari de Barcelona) will be dealt with in the resolutions issued in the respective open guardianship files.

3. On 12/22/2021, the claim was transferred to the SLT Department so that within 15 days it could make any allegations it deemed relevant, without the entity having made any allegations about it

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 the elaboration of profiles, 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 reviewed 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 costs for any other copy requested by the interested party

administrative 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:

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 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 Department of SLT 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 SLT Department 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. 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, it is certified that on 10/26/2021 the person making the claim submitted his application addressed to the entity, and on 10/28/2021, the SLT Department informs him that his processing has been accumulated with the processing of another procedure (file (...), also initiated following a request submitted by the same claimant, and that a single resolution will be issued).

As a first consideration, it is necessary to refer to the fact that the SLT Department issued, on 29/10/2021, a resolution linked to the request submitted by the claimant here. However, this resolution cannot be considered to comply with the right of the person who submits the request for the right of access, to receive a response from the data controller, from a data protection point of view.

In this sense, it should be noted that, from the very beginning, the SLT Department, to the requests presented by the person making the claim here, and that the entity accumulates under the same procedure, grants them the nature of a request for the right of access to public information, provided for in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, LTC). And it is only under the prism of the LTC that, on 10/29/2021, the entity rejects access to the information requested by the claimant here, with the arguments that the request must process as a right of access provided for in the data protection regulations (art. 15 RGPD), or as a right of access to the file recognized in the administrative procedure legislation (art. 26 of Law 26/ 2010 and 53.1.a LPAC).

Well, as indicated in the resolution of the SLT Department, the request dated 26/10/2021 is a request to exercise the right of access regulated in article 15 of the RGPD.

In this regard, it should be noted that, despite the fact that in the text that the person making the claim here in the request referred to a "REQUEST FOR ACCESS OF

INFORMATION", which could have induced the Department of SLT to discard its treatment as a right of access under the RGPD, the truth is that, from the point of view of the right of access to one's own data (or those of his representative) which regulates the legislation on the protection of personal data, the determination of whether or not what is requested fits the aforementioned right of access, does not depend on the qualification that the interested party can make in his writing, but of the claim that is specifically formulated. In this regard, taking into account the claim made by the claimant here - access to a series of emails and mobile phone messages which supposedly contained his personal data (or those of his representative) -, it is necessary to grant the request dated 26/10/2021 the nature of an exercise of the right of access of the RGPD. This, without prejudice to the possibility that this right may act concurrently with the right provided for in article 53.1.a) LPAC.

So things are, although it is true that the person claiming received an answer to his request, the fact is that, with the resolution of the SLT Department, he was not given a particular answer under the prism of the regulations of data protection, and that at the time this resolution is issued, there is no record that the entity has given any response to the person making the claim in this regard, thus leaving the request without a formal response.

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. 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).

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 Catalan Health Service of the SLT Department 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 short, with regard to the substance of the resolution, it proceeds to recognize the right of access to the person making the claim, in the sense that the Department of SLT must respond to the right of access to personal data requested. All this, without prejudice to the fact that in this response the entity may indicate to the person making the claim, if this were the case, that it does not have the

information requested in exercise of the right of access, or that the access does not proceed due to the concurrence of one 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 Service of the SLT Department.
2. Request the Catalan Health Service of the SLT Department 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 claiming, in the form indicated in the 5th foundation of law. 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 Service of the SLT Department 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,