

File identification

Resolution of the rights protection procedure no. PT 135/2021, relating to the Barcelona Health Consortium

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 Consorci Sanitari de Barcelona (hereafter CSB).

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 CSB. In the request he requested:

"Access to corporate emails, WhatsApp messages, and other types of telephone messaging services, in the exercise of their functions in relation to (...)

REQUEST FOR ACCESS TO INFORMATION WITHIN THE SCOPE OF ITS FUNCTIONS OF THE PUBLIC HEALTH AGENCY OF BARCELONA, IN ALL OF ITS COMPETENT AREA IN RELATION TO THE CASE OF (...), IN EVERYTHING THAT CONCERNS ITS RE-ENTRY AND COMPLEX CASES, AND THE WHICH 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".

- The communication from the Coordinator of Transparency, Access to Information and Good Governance of the SLT Department, dated 10/27/2021, 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 39/2015, 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 CSB will be the subject of analysis. The claims relating to the two other claimed entities (the ICS and the

Catalan Health Service) 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 CSB so that within 15 days it could formulate the allegations it deemed relevant.

4. The CSB made allegations in a letter dated 01/13/2022, in which it set out, in summary, the following:

- That *"The request for access that motivates the claim of Mr. (...) before the GAIP, it has never been entered in the Register of entry and exit of documents of this Consortium, nor in the generic corporate processing of requests for access to public information. The first and only evidence that the CSB has had of the existence of the aforementioned request was as a result of the email, dated December 22, 2021, through which the TIC Salut Foundation - in the capacity of protection delegate of data - gives him a transfer from the APDCAT office and the documentation attached to it, which includes the claim before the GAIP relating to the aforementioned request for access, made on a date that is not recorded."*
- That *"Among the documentation that has been transferred to formulate the present allegations, it appears that the request for access with code (...), previously cited, would have been addressed to the CBS "within the scope of the exercise of its functions as the administrative body corresponding to the Public Health Agency of Barcelona". From the aforementioned documentation it is also inferred that the issuer of the information that Mr.(...) would have requested from the CSB (e-mails, WhatsApp, ...) would have been the Catalan Institute of Health (ICS); and that the content would refer "to the case of (...) in everything referring to its context and content in general. From the requested dates. Between Administrations and administrative units of the Generalitat de Catalunya to which any person from the ASPB has addressed"*.
- ÿ That *"the Public Health Agency of Barcelona has its own legal personality and is distinct from that of the CSB and, as such, has its own governing, management and management bodies through which it conforms its will and their decisions are executed.*

For this reason, if the facts and information giving rise to the claim were related to acts or agreements of the Public Health Agency of Barcelona, the CSB would not have been able to attend to or resolve it, if it had been received. "
- That *"In the same situation of its own legal personality and with its own governing and management bodies is the ICS. For this reason, if the CSB had received the request that is the subject of the present allegations, it would not have been able to provide the applicant with information of which it is not the issuer, which is not in its power, nor does it have any legal title valid in law to request it from the entity that issued 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 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 from the receipt of the request, indicating the reasons for the

procrastination 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.

(...)"

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 CSB 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 CSB 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 regard, it is certified that on 10/26/2021 the person making the claim presented his request addressed to the CSB, and, on 10/27/2021, the Coordinator of Transparency, Access to Information and Bon Government of the Department of SLT informs you that its processing has been accumulated with the processing of another procedure (file (...)), and that a single resolution will be issued.

As a first consideration, it should be noted that, from the outset, the request to the CSB is treated and processed as a request for the right of access to information provided for in Law 19/2014, of December 29, of transparency, access to public information and good governance (hereafter, LTC). The same is the case with the rest of the requests submitted by the person making the claim (referenced to the 1st legal precedent) and that the Department of Health accumulates under the same procedure, which is put to an end by the resolution of the Technical Cabinet of Department of Health, dated 10/29/2021, by which access to the information requested by the claimant here is rejected, with the arguments that the request must be processed 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). So things are, although it is true that with the referenced resolution of the Department of Health, the person claiming received a response to their request, it cannot be considered, from a data protection perspective, that the said resolution fulfills the right of the person who submits a request for the right of access to receive a response from the data controller.

In relation to this point, it should be noted that the CSB states in its defense that it was not aware of the existence of the referenced request until it was sent to it as part of the present claim by this Authority , on 22/12/2021.

Certainly, the stated reason would explain why the CSB had not been able to give an answer to the claimant within the stipulated time, but not the lack of answer. About this, it should be noted that, as the entity itself acknowledges, it did become aware of the request at a later time, when this Authority gave it a transfer along with the rest of the documentation presented by the claimant, including the resolution of the Department of Health, dated 29/10/202, by which the request is not accepted as a right of access to the public information of the LTC, and it is indicated that it must be treated as a request of right of access of the RGPD or the LPAC. Therefore, from that moment on, the CSB does know that a request addressed to the entity has been submitted, and that, as the resolution of the Department of Health indicates, said request must be treated as a GDPR right of access request. Even so, it does not proceed with the request, nor does it inform the claimant of the possible reasons for its non-action, as established in article 12.3 of the RGPD. Next, the CSB also states that, from the content of the request, it appears that the personal data to which the claimant here wants to access are those that have been processed by entities other than the CSB, such as the ICS or the Agència Salut Pública de Barcelona (ASPB), which is why *"the CSB would not have been able to attend to or resolve it, had it received it."* Well, on this point it should be noted that, although it cannot be denied that the terms in

that the object of the request is set out may lead to some confusion about the data to which the interested party wanted to access, this reason does not exonerate the CSB - entity to which the claimant here expressly stated that directed the request to the section indicated for that purpose on the request form -, to give an answer, or that it was to inform of any possible reasons that could arise for not proceeding with the request or, in his

case, to require you to specify the data or processing activities to which you referred the request (art. 13.2 LOPDGDD).

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 CSB, the entity to which said request was originally addressed, has given any response to the person making the claim in this sense, 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 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 CSB must respond to the right of access to personal data requested. All this, without prejudice to the fact that, in advance, the entity may require the interested party to specify the data or processing activities referred to in the request, or that the entity with the final answer that give the person here claiming can indicate, if it were the case, that he 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 the 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, certify that it has given a response to the 7/8

request for right of access submitted 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 Consorci Sanitari de Barcelona.
2. Request the Consorci Sanitari de Barcelona 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 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 Consorci Sanitari de Barcelona 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,