File identification

Resolution of the rights protection procedure no. PT 141/2022, urged against the Consorci Sanitari de Terrassa.

Background

1. On 11/11/2021 the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, claimant), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Consorci Sanitari de Terrassa (hereinafter, claimed entity) . Specifically, he stated that this entity had not given him an answer within the legally established deadline.

He accompanied his letter with an email sent on 26/08/2021 to the mailbox of the Citizen Service Unit of the claimed entity (atencioalciutada@cst.cat), which attached a letter entitled *" request for the exercise of the right of access",* through which he stated the following:

> *"In accordance with what is established in article 15 of Organic Law 15/1999, on the protection of personal data, I have the right to access in a clear and understandable* way *my personal data included in the history clinic, to the data resulting from any elaboration, process or treatment of that data as well as to be informed about the origin of the data, assignees, uses and purposes for which they were stored, therefore;*
>
> *I, (...) with ID (...) request to exercise this right in relation to the data I specify below:*
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> *I want a document that reflects all the accesses, to my patient file, history or clinical course or personal data, made from any entity (CAP, hospital, association, foundation) and/or department that belongs to or has a link with the Consortium Sanitari de Terrassa specifying the place, position, date and information consulted.*
>
> *Specific data of the period to be treated*
> *The dates I want are from 01-01-2019 to today."*

2. On 11/25/2022, the claim was transferred to the claimed entity so that within 15 days it could formulate the allegations it deemed relevant.

3. On 11/30/2021, the Authority received an email from the person making the claim, accompanied by various documentation. Specifically, he provided the written response to the access request, as well as several emails exchanged between this person and the claimed entity. In the letter of response, dated 11/24/2021, the claimed entity indicated the following:

> *"(...) it is not currently technically possible for us to review the accesses from the date you ask us, since we can consult our active history from 1*

of October 2020, the date from which it was possible to trace the accesses to your HC.

From the review and control carried out, different accesses have been detected, which are made after the date of the tracking request and by workers linked to the review and control tasks necessary to respond to your request request (staff from the Citizen Service and Information Systems Unit).

Consequently, all accesses are considered and evaluated as motivated and justified based on the purpose of managing the request received and on dates subsequent to the entry of said request, without having been accredited or able to determine that has been misused or there has been any breach of the duty of confidentiality.

Therefore, it follows that improper access cannot be established and in this sense, from the security and protection of personal data, there is no reason to consider the existence of an infringement by the workers who they accessed their HC.

However, we inform you that there is the possibility of referring your request to the Department of Health in order to manage the tracking of accesses to the HC3 (Shared History of Catalonia) on the dates from January 1, 2019 to September 31, 2020."

With regard to the content of the written response, the claimant clarified that his request for access was not intended to know the identity of the people who had accessed his medical history (HC), nor that 'start any investigation for possible improper access to your HC. Among the emails he provided, there were two that he had sent on 21/10/2021 and 27/10/2021 to the Citizen Service of the claimed entity, through which he reiterated his request for access, stating that on the date of the email he had not yet received any response: *"I do not understand that they are reviewing, I have not requested any review, what I am asking is to exercise my right of access to ARCO-POL and to know the accesses of any type in my file or profile".*

4. The claimed entity formulated allegations against the transfer of the claim, by means of a letter submitted on 12/20/2021, in which it set out, in summary and for what is now of interest, the following:

- Regarding the date of entry of the request for access to the claimed entity: *"By email dated 08/26/2021 (...) arrives at the mailbox of the Attention Unit to the Citizen of the CST the request of Ms. (...)".*

- Regarding the response date to the access request: *"On 11/24/2021, within 3 months of the request (received on 08/26/2021), the Director-Manager of the CST formalizes the response to be given to the applicant, a copy of which is attached. The delivery of the communication to the applicant takes effect on the following day 11/30/2021, by email to the same reference address of the applicant."*

- With regard to the actions carried out by the claimed entity in order to clarify the his request: *"On 07/09/2021 (...) the UAC contacted the applicant in order to clarify the specific content of the request made, in the sense of clarifying whether he had suspects improper access to his Clinical History (hereafter HC) (...) At the same time,*

the clarification was added that it was not possible to provide the data of the interveners' professionals. Or if on the contrary, it was a request for access to your HC and, in particular, to obtain a general record of existing accesses (...) According to the various emails and telephone conversations held with the applicant, it is determined and concluded that this formulates the action of the right of access to information with regard to the traceability of accesses, for the principle of transparency, (...) the request is extended to accesses from the HC of the CST and, in addition, to the HC3 (Shared Clinical History of Catalonia), which is not managed directly by the CST, but by CatSalut/ Department of Health, from CST devices. According to the applicant's statements, there were accesses to her HC3, from CST devices, on different dates."

- Regarding the complexity of the information requested: *"During the processing of the request, the applicant was contacted and requested on different occasions, in order to define the object and time frame of your request, taking into account the technical complexity and the huge volume of information that involves analyzing almost a thousand days of records (from 01/01/2019 to 08/26/2021), both in own and external records (HC3) and in different healthcare devices."*

- Regarding the information given to the person making the claim: *"(...) this record is temporarily limited, for reasons of capacity and volume of information, so that it can only go back one year, until date 01 / 10/2020, so there is no evidence of possible access for the period from January/ 2019 to September/ 2020.*

As for the period that has been verified, there is no record of access to the applicant's HC, only the accesses on a date subsequent to the request received by the staff assigned by the CST for the management and processing of the application in question.

At the same time, regarding the registration of accesses to the HC3 from CST devices, it should be noted that access to the HC3 is not direct, but must always be articulated and conveyed through a first access to the patient's HC-CST and from this access secondary access to the HC3 is allowed.

Therefore, due to the mechanics of the Information System itself, it is concluded that, in the reference period, no access to the HC3 can have taken place either, as long as the previous and necessary access has not taken place to the applicant's HC-CST."

5. On 05/05/2022, the person instructing the procedure consulted the corporate website of the claimed entity, and specifically, the section on privacy policy, in which it is reported, as far as it is concerned, that the Consortium Sanitari de Terrassa is the data controller, whose data is processed, among other purposes, to guarantee the registration and monitoring of medical treatment provided in its centers; and that users of the service can exercise their data protection rights *"by sending an email to atencioalciutada@cst.cat or in person at the Citizen Service Unit of the Consorci Sanitari de Terrassa".* The following 20 centers are listed in the information section of the website of the centers affiliated to the Consortium:

- Hospital Care: Terrassa Hospital.

- Primary Care: CAP Terrassa Est, CAP Sant Llàtzer, CAP Terrassa Nord, CAP Matadepera, CAP Anton de Borja, CAP Sant Genís, CAP Doctor Joan Planas, and CAP Can Roca.
- Socio-health care: Sant Jordi Day Hospital, Sant Llàtzer Hospital, the Dependency Care Assessment Service (SEVAD), the Disability Care Center (CAD73) and the Sant Llàtzer Residential Home.
- Mental health care: Community Rehabilitation Service (2 centers), Adult Mental Health Center, Ferran Salsas i Roig Mental Health Center, and the Foster Home.
- Sports medicine: CAR Care Unit of Sant Cugat.

From the result obtained, the corresponding due diligence was carried out.

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 (henceforth, the RGPD), regarding the right of access of the interested person, provides in section 1 the following:

> *"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 (…)"*

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 and 4 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 a period of one*

> *month from the receipt of the request, indicating the reasons for the delay (...).*
> *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."*

For its part, article 13 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), determines the following in section 1:

> *"1. (...) 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 claimed entity resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for his complaint that initiated the present procedure for the protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 08/26/2021 he joined the entity
claimed a letter from the person claiming, through which he exercised his right of access provided for in the data protection regulations. The fact that in the request for access the claimant mentioned the repealed rule *("Article 15 of Organic Law 15/1999...")* instead of the current rule (art. 15 of the RGPD) is not relevant, since it is clear from the title and content of the letter that the will of the person making the claim was to exercise the right of access to their personal data. Consequently, the claimed entity, as responsible for the treatment, was obliged to respond in accordance with the regulations indicated in the previous legal basis. This, regardless of the response that the said request deserved.

Thus, in accordance with article 12.3 of the RGPD, the claimed entity 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

Well, the claimed entity has acknowledged that it did not respond to the access request until 11/30/2021 via email sent to the claimant, as

this person has recognized before the Authority. Therefore, he did it once the legally established deadline, which ended on 09/25/2021, had already passed.

As justification for this delay, the claimed entity has referred to the complexity of the request, both in terms of its understanding, and the volume of the amount requested. However, from the reading of the request, it cannot be inferred that the difficulties presented justify such a delay in the response, taking into account that the access request was clear as to the fact that it did not refer to possible improper access which could require a detailed analysis, but only to a list of accesses made in a given period. On the other hand, in this consideration it is also taken into account that the person claiming sent his request to the electronic address provided by the entity for this purpose. And in any case, if that were the case, the claimed entity should have requested single extensions and communicated them to the person now claiming within one month from the receipt of the request, d in accordance with the provisions of article 12.3 of the RGPD, a matter which is not known to the Authority, and which in any case the entity has not invoked.

Consequently, since the claim was based on the lack of response to the request to exercise the right of access, it is necessary to declare that the claimed entity did not resolve and notify said request in a timely manner submitted by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

4. Next, the substance of the claim must be analyzed, that is, if, in accordance with the precepts transcribed in the 2nd legal basis, access to the data proceeds in the terms requested by the person making the claim.

4.1. On the limitation of the response to the material scope of the right of access.

First of all, it should be noted that the right of access recognized in Article 15 of the RGPD does not recognize the right of access to any information, but only to the personal data of the person exercising the right, as well as to the information indicated in section 1 of this article, such as that referred to the purposes of the treatment, the categories of personal data, etc. Among the information provided for in this section 1 that must be provided, it appears, for what is now relevant, that corresponding *to:"c) the recipients or the categories of recipients to whom the personal data has been communicated or will be communicated, in particular third-party recipients and International organizations".* Well, this information provided for in this section c) would be the only one that would be related to the object of the access request made by the person making the claim.

Indeed, the claimant requested access to the information on the accesses to his clinical history carried out from any entity or department *"that belongs to or has a link with the Consorci Sanitari de Terrassa specifying the place, the position, the date and the information consulted",* corresponding to the time period between 01/01/2019 and 08/26/2021.

However, the right of access recognized in article 15 of the RGPD does not include in this case access to information about all the accesses that have been made to the medical history of the affected person, but only the regarding the accesses made by *the recipients or categories of recipients to whom personal data has been communicated or will be communicated.*

Thus, for example, if the person making the claim has been assigned a certain CAP of the Consortium, access by people who carry out their professional functions as an integral part of this CAP, does not properly constitute a communication of data, and consequently, it is not part of the information that the claimant must provide by virtue of the exercise of the right of access provided for in article 15 of the RGPD. This without prejudging the legitimacy of any access that may have been made by the staff of this centre.

On the other hand, if the claimed entity has communicated personal data of the claimant to a center or entity that is not part of the Consortium, it should inform the claimant about this communication (identifying the receiving entity, the date and the scope of the data communicated).

Having said that, in this case it is also necessary to take into account that the claimed entity is a Consortium made up of 20 health centers (antecedent 5), which singularly provide different types of health services, which allows us to infer that they do not appear in a system of integrated information. For this reason, in this case the claimed entity should also inform about the data accesses/communications made between the centers that make up the Consortium.

On the other hand, continuing with the considerations on data communications, the claimed entity should also inform about the data communications derived from the publication of medical documentation in the shared clinical history in Catalonia (HC3) of the claimant. It should be clarified that the Consortium should not report on mere access to the HC3 by its staff, but only on those accesses in which documentation with the claimant's data had been published, since in such a case it would have occurred a data communication. In the event that the claimant wishes to access this information (the persons who have accessed their HC3) by virtue of the exercise of the right of access in Article 15 of the RGPD, they should make this request before the person responsible for the treatment of HC3, which is the Department of Health of the Generalitat.

Finally, it should be remembered that the right of access in Article 15 of the RGPD does not include the obligation, for the person in charge, to communicate the identity of the specific persons who may have had access to the personal data of the owner This without prejudice to the fact that, beyond the content of the right of access, the person in charge can provide this information voluntarily, or must provide it by virtue of the right of access to public information provided for in the transparency rules, if the person claiming here makes a request for access to the Consortium in exercise of this other right.

4.2. On the response of the claimed entity to the request for access made by the person making the claim.

In accordance with what was stated in the previous heading, it is necessary to analyze the response given by the claimed entity solely with regard to the information that falls within the right of access in Article 15 of the RGPD.

In this respect, in the letter dated 11/24/2021 in response to the access request, the claimed entity has stated that they do not have information prior to 10/1/2021, and that , with regard to the information contained in it from that date, all the records contained therein would correspond to accesses made on a date subsequent to the time interval requested by
the person claiming (01/01/2019-08/26/2021). In particular, he specified that these are the accesses carried out by the people who have reviewed the record of accesses to the medical history of the person claiming as a result of the access request made by that person. And to that effect, he has provided a document containing accesses made on 10/09/2021, 25/10/2021 and 26/10/2021. So things are, if in the required period there are no accesses to

the HC of the person making the claim, data communications that have not been accessed cannot have been made. This would seem to be the case, as can be seen from the statements made by the claimed entity. In any case, it should be noted that in the response email that the entity sent to the person making the claim on 30/11/2021 by which it sent the response to the access request, it was pointed out the following: *"In the attached file you can read the response to the request to verify access to your medical history from our health center."* Given that the claimed entity is made up of 20 health centres, it is considered necessary to clarify this answer, as set out in the 5th legal basis.

On the other hand, from the statements made by the claimed entity in writing to the Authority, it appears that there have been no publications - communications of the claimant's data - in his clinical history shared in Catalonia (hereinafter , HC3).
This conclusion is reached based on the information provided by the entity regarding the fact that, from the Consortium's centers, access to a patient's HC3 is effected through prior access to the clinical history (HC) of this patient, and on the statement that there are no accesses to the HC of the person making the claim. Certainly, in accordance with the mentioned system of access to the HC3, if there are no accesses to the claimant's HC in the analyzed period, there will also be no accesses to the claimant's HC3. But given that the Consortium's response *("... from our health center"),* is ambiguous in regard to the number of centers that make it up, this point will need to be clarified, as set out in the 5th legal basis.

This information about the claimant's data communications (either those derived from the publication of documentation in the HC3 or other communications -at least, to external entities-) is not included in the written response to the request d 'access that the entity addressed to the claimant on 30/11/2021, or at least, it is not clearly listed, for the reasons stated. And therefore, it is considered that the claimed entity did not provide the claimant with information that Article 15 of the RGPD prescribes to be provided, which leads to the estimation of the claim.

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 makes effective the exercise of the claimant's right of access , in the sense that it informs the person making the claim about the following points:

5.1. If the claimant's data has been communicated to a recipient, either to a recipient external to the Consortium, or to another center in the Consortium. In the case of an affirmative answer, you will need to be informed about the recipient entity or center, the date of the communication and the data communicated.

5.2. If a center of the Consortium has published data on the person making the claim in their HC3. In the case of an affirmative answer, you will need to be informed about the date of publication and the published data.

For all this, I resolve:

1. Estimate the guardianship claim made by Mrs (...) against the Terrassa Health Consortium, insofar as the Consortium did not respond to her request for access
within the period established in the applicable regulations, nor did he inform her about the communications made, in accordance with what is indicated in the 4th legal basis.

2. Request the Consorci Sanitari de Terrassa 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 and scope indicated to the foundation of law 5th. Once the right of access has taken effect, in the following 10 days the claimed entity must report to the Authority.

3. Notify this resolution to Consorci Sanitari de Terrassa 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,