

## File identification

Resolution of the rights protection procedure no. PT 142/2021, urged by Mr. (...) against the Department of Health

## Background

1.- On 11/15/2021 the Catalan Data Protection Authority received a claim made by Mr. (...) (from now on, the claimant) against the Department of Health, for not responding to the request to exercise the right of access to the data contained in its files, in accordance with that provided for 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 movement thereof (hereinafter, RGPD). The claimant bases the claim on the fact that he submitted a request to exercise the right of access on 07/06/2021 and more than four months later he received no response from the Department of Health.

For the purpose of proving the facts, the claimant provides the request that he submitted to the Department of Health on 07/06/2021, through Burofax, exercising his right of access to his own data, and requesting, in literal terms: "I am granted the right of access to the files of the HC3 free of charge, obtaining from them: - All the data included in the file "Register of health information of patients" - The personal data that are being the subject of treatment. - The origin of the data. - The uses and purposes for which my data is intended. - The communications to third parties that have been made, or that are planned to be made of my data." Likewise, he requests that the information be provided to him by post to his address or through any other suitable system, with the exception of "screen display because it is incompatible with my visual impairment".

2.- By official letter dated 11/25/2021, this Authority transferred the claim to the Department of Health, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 12/21/2021, the Authority received the statement of allegations from the Department of Health through which the following is argued, in literal terms:

- "We have proceeded to review the processing circuit for the exercise of ARSO-POL rights for the referenced case. Once the situation was analyzed, it was noted that the request made on July 6 was recorded even though it was incorporated into another request, without the duplication being detected in the review of requests that performed twice a month. Following the request from the APDCAT, the traceability of the entry has been sought. Once the request has been identified, a response has been given to the person making the request".

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4.- On 12/29/2021 the claimant presented to this Authority a new letter through which, in relation to the information received from the Department of Health, he stated the following:

"On December 15, 2021, I received a response from the Catalan Health Service regarding the exercise of the right of access to my Shared Clinical History, HC3. The documentation received is only verbatim medical reports as well as a summary of accesses. I request: A) I am attaching postal documentation received for evaluation. Health information has been removed. B) I understand that the literal medical reports are accessible by the medical staff (doctors and nurses) of the center where they provide care, where the episode is generated, and by the interested party (a server). Why do other people (in this case Mr. XX, page 2 attached Doc1.pdf) have access to private data?  
C) The final summary did not include: - data from the medical reports sent (this would prevent the report from passing through unauthorized hands) - access to the CAP Pare Claret de Barcelona where he was registered until July 2018 C) For his knowledge at date of this request I do not have access to the "Data" option Personal / consult the accesses made to your data" since I exercised my right of access. I claimed it from Health on December 20, 2021"

Among the documentation provided by the claimant, a letter is attached that the The Department of Health addressed you on 12/13/2021, informing you of the following:

"First of all, to apologize for not having responded in the appropriate period, for various reasons we did not process it. From the different points of your request, we inform you that:

1. The data from the HCCC Health Information Register, you will find attached all the available information.
2. The data that are the subject of treatment are the same and are available at the HCC level.
3. The origin of the data is from the different centers where you have been treated, as far as we know they are: Hospital del Mar, Fundació Puigverd and CAP La Pau.
4. The purpose of the data is the provision of healthcare.
5. We attach the access to your data".

The claimant also provides this Authority with several medical reports on his person, and the record of access to his shared medical history, during the years 2020 to 2021, updated on 13/12/2021, which the Department of Health would have facilitated him, in response to his request. The documentation sent by the claimant to the Authority is presented with the medical information blacked out of the documentation.

5.- On 03/03/2022 this Authority transferred to the Department of Health the letter submitted by the claimant on 29/12/2021, so that it could present the allegations it deemed appropriate.

6.- On 03/03/2022 this Authority informed the claimant of the transfer of his considerations to the Department of Health, and informed him that the staff at the service of health organizations can access the personal data that act by virtue of the functions entrusted to them. However, he was informed that, if he considered that someone had improperly accessed his health data, he could bring these facts to the attention of the Authority, through the complaint procedure.

7.- On 05/03/2022 the person claiming submitted a letter to the Authority requesting, in literal terms, the following: "Protocol or means to request to restrict my clinical history/ clinical data in order that only "health professionals" have unique and exclusive access. I don't want to allow access to either administrative staff, the Citizens' Management Department or IT staff."

8.- On 18/03/2022 this Authority indicated to the person claiming that the exercise of the rights, among others, of opposition, limitation and deletion of the processing of personal data, must be carried out before the data controller and, only in the event that the entity does not respond to the request within the indicated period, or is not satisfied with the response, it can file a guardianship claim with this Authority.

9.- In response to the allegations presented by the claimant on 12/29/2021, the Department of Health informs this Authority that on 12/12/2021 the right of access formulated by claiming by sending the requested information. He adds that the documentation was sent without blacking out and that, in order to ensure the claimant's right of access, the requested information has been sent to him again.

10.- On 07/04/2022 this Authority informs the person claiming that the Department of Health has proceeded to send him the information he requested, and gives him a period of five days to present allegations, with the caveat that, after this period has passed, if you have not submitted any allegations, it will be understood that the information provided has satisfied your right of access.

11.- On 08/04/2022, the person making the claim appeared at the Authority's premises to make it clear that, in response to the office indicated in the previous antecedent, he had already received the information that applied to the Department of Health. Likewise, the person claiming also made it clear that the documentation he presented on 29/12/2022 before this Authority appeared blacked out since he himself anonymized his health data, to be unnecessary .

In this act of appearance, the Inspection Area raised a record of the statements made by the claimant.

## 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 28, relating to the protection of natural persons with regard to the processing of personal data and the free movement of these (hereafter, the RGPD), regarding the right of access of the interested person, provides 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, 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 submits the request by electronic means, and unless he requests that

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otherwise facilitated, 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."

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

"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

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request, before providing the information, that the person concerned specify 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 necessary to analyze whether the Department of Health 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 it was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is not a disputed fact that, on 07/06/2021, the Department of Health received a letter from the person claiming, through which he exercised his right of access to his shared medical history.

In accordance with article 12.3 of the RGPD, the Department of Health had to resolve and notify the resolution of the exercise of the requested right within a maximum period of one month from the date of receipt of the request

Well, within the framework of this rights protection procedure, the Department of Health has recognized that it did not respond to the claimant's request for the right of access within the period established in Article 12.3 RGPD, and not having made the claimed documentation available to the claimant until 13/12/2021, after more than four months, from the receipt of this request.

Consequently, the response of the Department of Health, to the request for access made by the person making the claim, has been extemporaneous as it has far exceeded the deadline set by law.

4.- Regarding the merits of the claim, it must be taken into account that the Department of Health made the requested documentation available to the claimant, as part of this procedure.

Thus, on 12/29/2021 the claimant confirmed to the Authority that he had accessed, on 12/15/2021, the notification from the Department of Health, in which he provided information related to his request for 'access, and presented a letter of allegations, in relation to the documentation received.

In this regard, on 03/03/2022 this Authority forwarded the claimant's letter to the Department of Health and granted him a new deadline of ten days, to present the allegations he deemed appropriate. Well, in response to this transfer, the claimed entity informed, on 04/06/2022, that in the transmission of information dated 12/13/2021, the claimant was already made available to the information alone bid but that, in view of the claimant's allegations, and in order to ensure his right of access, he proceeded to notify him again of the information now claimed. Likewise, the Department of Health also highlighted not having blacked out the documentation sent on 12/13/2021.

Well, in response to the office indicated in the tenth antecedent, on 08/04/2022, the person claiming appeared at the premises of this Authority, in order to confirm that he had already received the information subject to the her claim, and to make it clear that she herself was the one who blacked out the documentation received from the Department of Health so that, when presenting the documentation to the Authority on 12/29/2021, the information could not be viewed medical on your person.

In accordance with the above, it must be understood that the claimant's right of access, although extemporaneous, has been satisfied within the framework of this procedure.

Article 21.1 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC) provides:

"The Administration is obliged to issue an express resolution and notify it in all procedures whatever their form of initiation. In cases of prescription, Waiver of the right, expiration of the procedure or withdrawal of the request, as well as of

sudden disappearance of the object of the procedure, the resolution consists of the statement of the circumstances in each case, with an indication of the facts produced and the applicable rules. (...)".

In the same sense, article 53.2 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, is pronounced.

For all this, I resolve:

1.- Declare extemporaneous the response of the Department of Health notified on 15/12/2021 to Mr. (...)’s request for access, without entering into other considerations, given that the right of access has satisfied within the framework of this claim procedure.

2.- Notify this resolution to the Department of Health and the person making the claim.



3.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://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,