

## File identification

Resolution of the rights protection procedure no. PT 1/2022, relating to the Hospital Clínic de Barcelona.

## Background

1. On 07/01/2022 the Catalan Data Protection Authority received a letter from Ms. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access he had previously exercised before the Hospital Clínic de Barcelona (hereinafter, the Hospital). The complainant complained that the Hospital had not provided him with all the documentation that would appear in his clinical history of Obstetrics and Gynecology.

In order to certify the exercise of this right, the claimant provided the following documentation:

a) Request to exercise the right of access - made to the Hospital by email of 11/15/2021 addressed to the Hospital's Clinical Documentation and Archives Unit (hereinafter, UDCA), by the which asked *"to obtain a copy of my entire clinical history of the Maternity, with reference to Gynecology and Obstetrics. I want the copy that the professionals have and access, not the one I can see for "My health"*.

b) Response from the UDCA addressed to the claimant on 26/11/2021, by which he was provided *"the requested documentation"*, via encrypted email.

c) Email of 11/28/2021 addressed by the claimant to the UDCA, in which he complained that in the documentation provided to him *"it does not show what was administered to me during the induction, nor the ultrasounds nor the emergency room (...)"* and asked that *"all the information"* be sent to him .

d) Email of 11/29/2021 by which the UDCA informed the person claiming that he had not been provided with the test reports because it was inferred from his request that he already *"had them through my health. I can send you images of the ultrasounds, if you give me a postal address, since they record them on CD"*.

2. On 01/27/2022, the claim was transferred to the Hospital so that, within 15 days, it could formulate the allegations it considered relevant, and provide the supporting documentation of the resolution of the request and its notification, if it has been resolved.

3. On 02/02/2022 this Authority received the Hospital's statement of objections in which it stated the following:

- That on 11/15/2021 the request of the claimant here to access his Obstetrics and Gynecology clinical history was received directly from the UDCA.

- That on 11/26/2021 a response was given to the request by sending the requested documentation via encrypted email, *"excepting that documentation to which the patient already has access through the "My Health" space » of the Catalan Health Service"*.

- That on 28/11/2021 the claimant here, *"in response to the previous communication, communicates that he lacks certain clinical information, being the images of the ultrasounds, the medication that was administered to him during the induction and information of your stay in the emergency room. From the Clinical Documentation and Archives Unit, it proceeds to respond to this request extension, on November 29, 2021, informing that this information was not provided to it because it was already available through the "La Meva Salut" space, but which could be sent to the postal address indicated by the patient"*.

- That on 01/12/2021 *"we proceed to send via certified mail to the address indicated by the patient the remaining documentation, this is images of the ultrasounds, information about the medication administered and their stay in the emergency room, constant in the tracking of the Correus shipment as a shipment delivered on December 3, 2021"*.

Attached to the statement of allegations, the Hospital provided a copy of the e-mails exchanged with the person making the claim and which coincide with those provided by him together with his claim (letters a/, b/, c/ id / of the 1st antecedent), as well as the copy of the proof of mail tracking that indicated that the shipment of documentation that was sent to the claimant here on 1/12/2021 and had been delivered on 03/ 12/2021.

4. To the extent that the claimant had not mentioned in her claim the shipment that the Hospital had sent her on 1/12/2021, by means of the office of 02/02/2022, this Authority conveyed to him the allegations made by the entity, at the same time informing him that, unless he argued otherwise within ten days, his request would be I would understand satisfied.

5. On 02/11/2022 the claimant informed this Authority that on 12/03/2021 she had indeed received, by certified letter, certain documentation that the Hospital had sent her, but that even so, she understood that the hospital had more information that it had not provided (and which it detailed).

6. On 02/15/2022, this latest letter from the person making the claim was transferred to the Hospital, so that, if deemed appropriate, it could make the appropriate allegations.

7. On 02/24/2022 the Hospital formulated a statement of allegations in which it set out:

- That practically all the documentation that the claimant related in his letter of 11/02/2022 and that according to her had not been provided to her, had been made available to her in the various mailings that had been sent to her until 01/ 12/2021.

- That *"having consulted with the Maternal-Fetal Medicine Service, complementary information is detected that is recorded in the care manager but is not automatically transferred to the patient's clinical course, corresponding to this complementary information to the ultrasounds or constants of the patient and visualization of the partogram. That this additional information is sent, on February 24, 2022, by email through a link with access to the referenced documentation (...)"*.

- That "according to the above, the Hospital Clínic de Barcelona has given all the clinical information to Mrs. (...) on gynecology and obstetrics that she has requested".

Along with its letter, the Hospital provided a copy of the email it had sent to the claimant on 02/24/2022, through which the rest of the requested information would be provided.

8. By official letter dated 03/31/2022 (notified on 04/02/2022) the person claiming the latest allegations made by the Hospital was transferred, and he was expressly warned that unless he showed his disagreement with the documentation provided, it would be considered that the claimed entity would have fully met his right of access.

This term has expired without the claimant having shown his disagreement by understanding that his right of access has been satisfied.

### **Fundamentals of Law**

1. The director of the Catalan Data Protection Authority is competent to issue this resolution, 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 thereof (in hereinafter, 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."*

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.*
2. *The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right. However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.*
3. *For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it*
4. *When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."*

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 Hospital resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim.

The background first shows that, on 11/15/2021, the claimant submitted - by email - a request for access to the Hospital's UDCA, for which he requested access to his medical history of Obstetrics and Gynecology.

In accordance with article 12.3 RGPD, the Hospital 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. In relation to this issue, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and the Article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in proceedings initiated at instance of part (as is the case) starts from the date on which the request was entered in the register of the competent body for its processing.

However, it is proven that the Hospital, although it provided certain documentation to the claimant within the one-month period provided for in the regulations, did not give a complete response to the access request until the 24th /02/2022, that is to say, when the said deadline had already been exceeded. As things stand, it can be concluded that the Hospital has extemporaneously resolved the request for access of the person making the claim.

**4.** With regard to the merits of the claim, it must be said that the Hospital has certified in the course of this procedure that, in response to the access request made by the person making the claim in which he requested to obtain of a copy of your Obstetrics and Gynecology medical record, has given you documentation through several shipments dated 26/11/2021, 01/12/2021 and 24/02/2022.

On the other hand, on 03/31/2022 (notified on 04/02/2022) this Authority forwarded to the person claiming the allegations presented by the Hospital in which he reported that he had been provided with a complete copy of the information requested, and granted her a period of ten days to present her allegations in this regard, expressly warning her that if the period indicated had passed without expressing her disagreement, it would be understood that the Hospital had given your access request in full. The person making the claim has not alleged anything against it within the period granted, which is why it should be considered that their right of access has been satisfied in the terms of their request.

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, regardless of the form of initiation. In cases of prescription, waiver of the right, expiration of the procedure or withdrawal of the request, as well as sudden disappearance of the object of the procedure, the resolution consists of the declaration of the circumstance that occurs in each case, with 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 the response of the Hospital Clínic de Barcelona to the access request of Mrs. (...), without going into other considerations regarding the substance, when the claimant's right has become effective, in accordance with what has been indicated in the 4th legal basis.
2. Notify this resolution to Hospital Clínic de Barcelona and to the person making the claim.
3. Order the publication of the resolution on the Authority's website ([apdcat.gencat.cat](http://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 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,