

File identification

Resolution of the rights protection procedure no. PT 9/2022, petition against the Catalan Institute of Health.

Background

1. On 01/24/2022, the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged disregard of the right of access regarding his medical history and traceability, which he had previously exercised before the Catalan Health Institute (hereinafter, claimed entity).

The claimant provided various documentation relating to the exercise of this right, among which the following should be highlighted:

1.1.- The request to exercise the right of access (together with the proof of its presentation on 06/10/2020 in the General Electronic Register of the Administration of the Generalitat), through which the person claimant stated the following:

I PRESENT

In accordance with the regulations in force on the protection of personal data and access to the medical history, and therefore the right to access in a clear and intelligible way my personal data included in the medical history, to the data resulting from any elaboration, process or treatment as well as being informed of the origin of the data, transferees, uses and purposes for which they were stored,

I REQUEST

exercise this right in relation to the data I specify below for the legal data retention period corresponding to the 2 years prior to the data extraction date:

- 1. Copy of the clinical history (...).*
- 2. Traceability (list of accesses to the clinical history in which the date, professional category, center, population, description of the module and justification are specified for each access).*

(...)

As the preferred channel to respond to this request, I request that the response be sent to me by email (...)

Request addressed to the Catalan Health Institute."

1.2.- A letter dated 13/10/2020 from the person in charge of Citizen Services, in which the following was noted:

"In relation to the request presented in the General Electronic Register by the Administration of the Generalitat of Catalonia on October 6, 2020 (...), in which you request traceability and a copy of your history clinic, I would like to inform you that we have sent it to the Primary Care Service (...) to deal with an issue that falls under its jurisdiction (...)"

1.3.- A second letter from the person making the claim (together with proof of its submission on 23/12/2020 in the General Electronic Register of the Administration of the Generalitat), through which he stated that on 19/10 /2020 had received the office dated 10/13/2020 from

the person in charge of Citizen Services (document 1.2), he complained about the consequences that the delay in the response could have regarding the information on traceability, because it had not been preserved, and reiterated the request for access, although he stated that he had received a copy of the medical history. Thus, among others, he stated the following:

"(...) On 14/01/2021, Ms. (...) from CAP (...) informs me that the medical history is being printed, that it is being sent to the SAP by suitcase and that they will send it to me by certified mail. It will be the corresponding service of the SAP (...) who is in charge of processing the request for traceability.

After receiving the copy of my clinical history and seeing that the certified mail does not contain any document related to the request for traceability, on 21/0/2021 I speak with (...), administrative officer of the SAP citizen service unit (...) and I express my concern for the time window to which the citizen can access for traceability, because I am only allowed to trace the two years prior to the request and as time goes by without complying with the request is moved to the scope of said window. Ms. (...) he informs me that I should not worry since the calculation of the two years counts from the date of the request, regardless of whether the response is delayed due to the exceptional circumstances of the pandemic (...)"

2. On 11/02/2022, the claim was transferred to the claimed entity so that within 15 days it could formulate the allegations it deemed relevant.

3. On 03/04/2022 the claimed entity submitted a letter to the Authority, in which it limited itself to pointing out the following:

"In response to your request, we transfer you from the letter addressed from Primary Care (...) to Mrs. (...) - the initials of the name and surname of the person claiming -, in response to her letter dated 06/10/2020 in which she tendered the exercise of his right of access, specifically traceability and access to his medical history. Letter to which was attached the list of accesses that were made from the different CAPs , all of them with a purely assistance purpose."

It accompanied the text of the letter mentioned therein, signed by the Barcelona territorial manager of the ICS, with the Primary Care Service's exit register (...) dated 02/04/2022, in the which indicated the following:

"In relation to your letter dated 06/10/2020, presented to the Catalan Institute of Health, through the online procedures of the website of the Generalitat de Catalunya (...) in which you requested to exercise the rights ARCOPOL, specifically the data on traceability and access to your medical history, informs you that all the accesses that have been made from the different CAPs have been for the purpose of care and, therefore, are justified.

For your information, we attach the list of accesses (...)"

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 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 (...)*

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. (...) When the interested party submits 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 and 4 of article 12 of the RGPD, establish 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 requests. 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."

Apart from the previous regulation, in the case analyzed here, it is also necessary to take into account the applicable health regulations. Specifically, on the one hand, the Basic State Law 41/2002, of November 14, basic regulation of patient autonomy and rights and obligations in the field of clinical information and documentation (hereinafter, Law 41/2002) which establishes in its article 18 the right of access to the clinical history in the following terms:

"Rights of access to the clinical history

- 1. The patient has the right of access, with the reservations indicated section 3 of this article, in the documentation of the clinical history and to obtain a copy of the data contained therein. The health centers must regulate the procedure that guarantees the observance of these rights..*
- 2. (...)*
- 3. The patient's right of access to the documentation of the clinical history cannot be exercised to the detriment of the right of third parties to the confidentiality of the data contained therein collected in the patient's therapeutic interest, nor to the detriment of the right of the professionals who participate in its preparation, who may oppose the right of access to the reservation of their subjective annotations.*
- 4.(...)"*

On the other hand, the Catalan Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation (hereinafter, Law 21/2000), which determines the following in article 13:

- "1. With the reservations indicated in section 2 of this article, the patient has the right to access the documentation of the clinical history described by article 10, and to obtain a copy of the data contained therein. It is up to the health centers to regulate the procedure to guarantee access to the clinical history.*
- 2. The patient's right of access to the documentation of the clinical history can never be to the detriment of the right of third parties to the confidentiality of their data appearing in the aforementioned documentation, nor of the right of the professionals who have involved in the preparation of this, who can invoke the reservation of their observations, appreciations or subjective notes.*
- 3. The patient's right of access to the clinical history can also be exercised by representation, as long as it is duly accredited."*

Finally, 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, states that: *"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 ICS 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 he initiated the present rights protection procedure, was the fact of not having obtained a response within the period provided for the purpose.

In this respect, it is certified that on 06/10/2020 the claimed entity received a written statement from the person making the claim, through which he exercised the right of access to his personal data.

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 ICS has not proven to have responded to the access request made by the person making the claim within the one-month period provided for the purpose, which ended on 05/11/2020.

In fact, with regard to the part of the request for access corresponding to the clinical history, from the letter dated 12/23/2021 provided by the person claiming (background 1.3) it is clear that he would have received a copy of your medical history on an undetermined date, but in any case after 05/11/2020, specifically, on a date between 14/01/2021 and 21/01/2021. And with regard to the part of the access request referring to traceability, from the letter of 04/02/2022 provided by the claimed entity it is inferred that the ICS would not have delivered a copy of the record of access to your medical history until a date close to 02/04/2022.

Consequently, it is necessary to declare that the ICS did not resolve and notify the access request submitted by the affected person in a timely manner. This notwithstanding what will be said below regarding the substance of the claim.

4. Regarding the content of the access request, the part referring to the content of the clinical history (4.1) will be analyzed first, and secondly, the part referring to traceability (4.2).

4.1. About the request for access to the content of the clinical history.

The right of access to the medical history includes the right to obtain a copy of all the documents included in the medical history of the person making the claim in which their data appear (art. 15.3 RGPD). Therefore, it must not be limited to the minimum mandatory content indicated by articles 15 of Law 41/2002 and 10 Law 21/2000 (transcribed in the 2nd legal basis), but the available documentation must be provided.

On the other hand, it should be borne in mind that articles 18.3 of Law 41/2002 and 13.2 of Law 21/2000 foresee limits to the right of access, referring, on the one hand, to the right to data protection of third parties regarding the data of these third parties that may appear in the clinical history in the therapeutic interest of the patient (here claimant). And on the other hand, the right of professionals to the confidentiality of their observations, assessments or subjective notes that they may have recorded. In the two cases indicated, access to this data

that may appear in the documentation to be delivered could be limited, making a record of the exceptional circumstances that apply and of the reservation expressed by the professional or another third party.

Since it is not known that there is any exceptional case of denial of the right of access provided for in Article 23.1 RGPD, nor has the ICS invoked any, the claimant's right of access to the content of the your medical history.

In this regard, from the second letter that the claimant addressed to the ICS on 12/23/2021, it appears that the ICS already gave him a copy of his medical history. With regard to the specific documentation given to the person making the claim, it should be noted that the Authority is not aware of the non-conformity of the person making the claim. Therefore, it is considered that the reason for complaint in the claim he submitted to the Authority was the extemporaneity of the response, as well as the failure to provide the rest of the information he requested.

In relation to this other information that he lacks, it should be borne in mind that the person making the claim formulated his request for access explicitly referring to the ends provided for in article 15 of the RGPD, relating to the origin of the data, the intended uses and purposes, etc. Given that the Authority is not aware that the ICS has provided this information to the person making the claim, the claim must be considered with regard to this information.

4.2. About the request for access to the traceability of the clinical history.

With regard to the part of the access request referring to traceability, during the hearing phase the ICS has provided a copy of an office that it would have sent to the person making the claim (outgoing register dated 04/02 /2022, antecedent 3) , in which it is pointed out that together with this office a copy of the access register is given, in reference to the requested traceability. It is worth saying, however, that the ICS has not certified before the Authority its notification to the person making the claim, nor has it referred to its content or whether the list of accesses it has given corresponds to the period of time requested by the person making the claim.

With regard to the traceability of accesses to a patient's clinical history from the perspective of the content of the right of access regulated in article 15 of the RGPD - the neglect of which constitutes the object of the present procedure of tutela-, it should be pointed out that the information that must be provided is related to the recipients or categories of recipients to whom the clinical information would have been provided, that is to say, the identification of the entities or persons outside the organization to whom reported the clinical data. Therefore, it would not include the identity of the staff attached to the person in charge of the treatment (in this case, the ICS) who has accessed the medical history.

On the other hand, the health regulations that have been transcribed in the 2nd legal basis, also do not recognize the patient's right to know the identity of the professionals who have accessed their clinical history. Another thing is that the claimant can access this information by exercising the right of access to public information regulated in article 18 et seq. of Law 19/2014, of December 29, on transparency, access to public information and good governance .

Therefore, with regard to the request for access referring to the traceability of the clinical

history, it is necessary to recognize the right of the person claiming to access the information regarding the requested period (from 07/10/2018 to 06/10/2020) on the recipients or categories of recipients to whom their data has been communicated, and reject the claim regarding the request for access to the rest of the information on traceability, to exceed the material scope of the right of access provided for in art. 15 of the RGPD .

In the letter that the ICS addressed to the claimant with an exit registration dated 02/04/2022 (background 3), the following was noted:

*"(...) I inform you that all the accesses that have been made from the different CAPs they have been for a welfare purpose and are therefore justified.
For your information, we attach the list of accesses (...)"*

Given that in its response the ICS refers to the existence of accesses to the claimant's medical history, carried out from different Primary Care Centers or CAPs , without specifying them, it cannot be ruled out that some of these CAPs does not belong to the ICS, but to another entity, that is to say, to another data controller, in which case, the accesses made from this or these third- party CAPs would constitute data communications, of those that should be informed to the claimant, in response to their request for access under Article 15 of the RGPD, identifying the recipient entity or center (from which the HC was accessed of the person making the claim), the date of the communication and the data communicated.

On the other hand, continuing with the considerations on data communications, the claimed entity should also report on those carried out in the shared clinical history file (HC3), since the person responsible for the treatment of this record is the Department of Health of the Generalitat of Catalonia and not each of the health centers that nurture it.

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 the protection of rights, the person in charge of the file must be required so that within 10 days 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 by electronic means the person claiming about the following extremes:

- 5.1. Regarding the information provided for in article 15.1.c) of the RGPD (linked to the request for traceability):
 - a) If the claimant's data has been communicated to a recipient, in the sense of a CAP or other entity outside the ICS. In the case of an affirmative answer, it will be necessary to inform it about the recipient entity or center, the date of the communication and the data communicated.
 - b) If the claimant's data has been published in his HC3 from a CAP of the ICS. In the case of an affirmative answer, you will need to be informed about the date of publication and the published data.
- 5.2. About the information mentioned in the rest of the sections of article 15.1 of the RGPD (FD 2n) (linked to the request for a copy of the medical history).

For all this, I resolve:

1. Declare that the Catalan Institute of Health gave an extemporaneous response to the access request made by Mrs. information regarding the ends provided for in article 15.1 of the RGPD, in the terms set out in the 4th legal basis, and dismiss the claim regarding the rest of the information requested regarding the traceability of the clinical history, to exceed the material scope of the data protection right of access.
2. Request the Catalan Institute of Health 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 Catalan Health Institute 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,