

## File identification

Resolution of the rights protection procedure no. PT 15/2022, petition against the Catalan Health Institute.

## Background

1. On 09/02/2021 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access, which he had previously exercised before the Catalan Institute of Health (hereinafter, the ICS) .

In order to certify the exercise of this right, the claimant provides the request to exercise the right of access, submitted on 12/16/2021, through which he requested the registration of healthcare professionals who accessed their primary care clinical history (ECAP) from 08/09/2021 to 12/15/2021.

2. On 04/03/2022 the claim was transferred to the ICS 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 you have solved it.

3. On 03/09/2022, the ICS's statement of allegations was entered in the register of this Authority, which, in literal terms, sets out the following:

- "*In response to your request, we transfer the letter addressed by the territorial manager of the ICS Camp de Tarragona to the person making the claim in response to his request to exercise the right of access. Letter to which was attached the list of accesses that were carried out, all of them with a purely assistance purpose. Likewise, we also provide you with the evidence of the notification process*".

Attached to the statement of objections, the ICS provides the letter notified by the claimant, dated 02/21/2022, which states the following (underlining is ours):

- "*In relation to your letter submitted to the Citizen Service Unit, with registration SIUAC\_1232378 in which you request the traceability of your data in the period between August 2021 - December 2021. We inform you that all access 'have been carried out with an assistance purpose and which, therefore, are justified. For your information, we are attaching the list of accesses to your medical history*".

4. By means of office of 17/03/2022, this Authority transferred the documentation received from the ICS to the complaining party, informing it that, unless it argued otherwise within a period of five days, its request would be considered satisfied. The claimant accessed the notification on 03/17/2022 and, after the indicated deadline, has

not submitted any objections to the 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 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 that initiated the present rights protection procedure, is the fact of not having obtained a response within the period provided for the purpose.

The background first shows that, on 16/12/2021, the claimant submitted a request to the ICS register, through which he requested access to the register of health professionals who accessed his history primary care clinic (ECAP) from 08/09/2021 to 12/15/2021.

In accordance with article 12.3 RGPD, the ICS 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 ICS did not respond to the reference request until 02/21/2022, that is to say, when the one-month resolution deadline provided for in the effect That being the case, it must be concluded that the ICS has extemporaneously resolved the request for access of the person making the claim.

4. With regard to the substance of the claim, it should be borne in mind that the ICS, within the framework of the present rights protection procedure and in response to the request for access of the person making the claim, in which asked specifically obtaining the record of health professionals who accessed your primary care clinical history (ECAP) from 09/08/2021 to 15/12/2021, has sent you on 21/02/2022 a list of accesses to the accesses to her clinical history made in the said period, also informing her that all of them had a purely healthcare purpose.

On 03/17/2022, this Authority forwarded to the claimant the letter of allegations that the ICS presented, and granted him a period of five days to present his allegations in the response that the ICS had given her, warning her that after the period indicated had passed without expressing her disagreement, it would be understood that she considered her request granted. 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.

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 the response of the ICS dated 21/02/2022 to the access request of Mr. your right of access.
2. Notify this resolution to the Catalan Health Institute and the person making the claim.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat <http://www.apd.cat/>), in accordance with article 17 of Law 32/2010, of 1 of October

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,