File identification

Resolution of the rights protection procedure no. PT 24/2022, petition against Sant Joan de Déu Health Park.

Background

1. On 07/03/2022 the Catalan Data Protection Authority received a letter from Ms. (...)(hereinafter, the person making the claim) -formulated through his representative-, for which he complained about the alleged neglect of the right of access to his personal data, which he had previously exercised before the Health Park Sant Joan de Déu (henceforth, PSSJD). Specifically, he complained because the claimed entity had breached the deadline for resolving his requests, partially delivered the requested information, and received the documentation in a different format than requested - he asked to obtain the information via email, and the PSSJD gave him a CD sent by certified mail–.

The claimant provided various documentation relating to the exercise of this right. Among others, he provided three forms that on 09/20/2021 he addressed to the corporate address < (...) > of the PSSJD through which he requested, in relation to the Benito Menni clinic and the PSSJD: access to the clinical history from 03/09/2012 to 09/19/2021; the traceability of said history from 25 to 27 May 2020, from 2 to 6 February 2021 and from 11 June to 30 July 2021; and, the clinical course from March 9, 2012 to September 19, 2021. In relation to all the information requested, it was requested to receive a response via email.

The claimant also provided the PSSJD's responses to the aforementioned requests which, in summary, resolve to facilitate the requested clinical course and clinical history, by means of a CD, and reject the requested traceability based on the following arguments: " *It is not appropriate for PSSJD to provide the names and other personal data of professionals who have accessed your clinical history for reasons of their duties. Alternatively, PSSJD issues a certificate relating to the accesses observed in your clinical history, a certificate that we attach."* Also, a document is attached that certifies that " *once the accesses to the medical history with the number (...) have been reviewed, it has been verified that there is no deletion of records, nor improper access, and only has been recording the data in the Electronic Clinical History in order to be able to reflect with maximum fidelity the corresponding care process."*

Finally, the complaining party explained that, on 10/25/2021, the PSSJD notified him of the answers to his requests, as well as the referred CD, via certified mail.

2 . On 04/25/2022 the Authority required the person claiming to, among others, confirm whether the information requested referred to the Benito Menni Mental Health Care Complex referred to a public healthcare provision or private

3. On 04/27/2022, in response to the request addressed to him by this Authority, the claimant informed, among others, that the information he wishes to access refers to the Menni Clinic " *which is a pavilion that is located within the Sant Joan de Déu Health Park and which belongs to the Mental Health Network of the Sant Joan de Déu Health Park, refers to a provision of public health care".*

4. On 05/18/2022, the claim was transferred to PSSJD so that within 15 days it could formulate the allegations it deemed relevant.

5. The PSSJD made allegations in a letter dated 07/06/2022, in which it set out, in summary, the following:

- That, *"On October 19, 2021, two letters of response are made* [to the person here claiming] *(,,,) The first letter, which we attach again as Document 1, responds to the request of traceability, it is accompanied by a certificate from the IT Service of our Institution dated October 18, 2021, which states that after reviewing the accesses to the clinical history, there is no deletion of records or improper accesses. The second letter, which we attach as Document 2, responds to the request for history and clinical course from March 9, 2012 to September 19, 2021. This letter was accompanied by a CD with the documentation in Encrypted PDF, indicating that the password to open the files is (...). On October 20, 2021, the DPD* [Data Protection Officer] *sends an email attaching a letter of response dated September 20, 2021. Different submissions were made to test the encryption mode. Document 3 is attached. Both letters together with the documentation on CD were sent by certified mail.*
- That, " *with respect to the content of the CD sent, the complaint does not specify which documentation is incomplete, but is limited to stating that it is a selection of PDFs, therefore it is difficult for us to be able to respond to the inaccuracy of the complaint In this sense, clarify that the files that make up the requested documentation are recorded in PDF format, since the history is computerized and does not allow a recording to be made in a single file."*
- That *, "both letters together with the documentation on CD were sent by certified mail".*
- That, *"reviewed again the contents of the CD we must state that it contains the documentation that Ms.* [now claimant] *requested".*

6. On 06/22/2022, the Authority required the person making the claim to confirm whether he was able to access the content of the encrypted CD and, if he had done so, to point out and specify what information from the clinical history and the clinical course would not have been given to him.

7. On 02/07/2022 the claimant presented the allegations which are transcribed below:

- *"In the letter of solitary confinement, documents were attached that certify that I accessed the contents of the CD, and that it does not contain any clinical history. The documents that attest to this fact are attached documents 12, 13, 14, 15 and 16. As can be seen chronologically, the CD goes from being encrypted in document 12, to leaving see all its content when it is decrypted, documents 15 and 16, where it can be objectified that there is no Clinical History requested. I was able to access all the documents. One of the objects of the complaint is that the CD does not contain the clinical history. It only contains different clinical courses that do not have periodic continuity as they are supposed to have. It also contains a selection of analyzes and electrocardiograms that in no case can be considered to be the requested Clinical History. The Clinical History is not within the contents of the CD that the PSSJD sent. If with the documents attached to the request the Catalan Data Protection Agency does not have enough to objectify it, I can send them the CD I received, by the means they tell me, so that you can check it themselves".*

- *"SECOND. In the request sent to the PSSJD, an amendment was made to receive the requested documentation via email. The delegate went to a lot of trouble sending the same letter three times, he said, to make sure he didn't have problems with the different encryptions and, he said, would be the means by which the PSSJD would contact me. Well, after all this hassle, the PSSJD decided to change the format and instead of sending the requested documentation by email, they selected, burned and certified a CD. (...) For this reason I decided to go directly to the Catalan Data Protection Agency in order to enforce my right to obtain the Clinical History that I requested and was not provided to me (doc 1). The notification only amends the HC, but my request for protection is because neither the Clinical History nor the traceability have been sent to me and also because the clinical courses are incomplete. None of the documents contained on the CD contain the data that should be contained. They do not record the TAs, nor the weight, nor the medication, nor the diagnoses, etc. "*

8. On 07/15/2022, the Authority asked the complaining party, to the extent that the PSSJD stated that all the documentation had been handed over to him, to report in as much detail as possible which documents from the medical history he considered that the PSSJD would not have delivered to him; and in this sense provide the evidence or indications that it deems relevant, which would prove that the claimed entity had more information than the one provided.

9. On 07/18/2022, the claimant presented, among others, the following allegations:

- *"What I have received are fragments of the clinical history, for a corner, clinical courses without pagination and with gaps ranging from a week to a year where no notes are recorded; unlikely since it is an admitted person. On the other hand, I have received selected PDFs of analytics and electrocardiograms and a loose authorization.*
- *I understand that they are asking me to send some proof of the tests that have been carried out on my client and which are not recorded because I told them that I had evidence of this fact, but I consider that if the Catalan Data Protection Agency does a request, given that they are authority, this must be answered in the terms that are made without any restrictions. That's why I prefer to reserve the information I have until I see the HC they finally send me*
- *What I am asking for is the complete copy of the HC, without fragments, paged, which contains everything that the law establishes and whose authenticity can be extracted from it. In the photographs of the CD that the PSSJD sent me and that I attached to my request for protection, it can be objectified that everything is fragmented and not part of a whole, which is what a HC is, and what It is requested (...)".*

Finally, the complaining party cites various regulations related to the rights of information concerning the patient's health and autonomy and points out specific documents that the claimed entity would not have given him, such as: family and personal physiological history and pathological, clinical course sheets, in case of admission, clinical procedures used and their results, medical treatment sheets, informed consent sheet, epicrisis reports or sheets of information provided to the patient in relation to the diagnosis and the plan prescribed therapeutic, if applicable.

10 . On 07/27/2022 the Authority sent the claims of the claimant to the claimed entity and required it to facilitate all the information requested from the claimant, by means of email, or present the allegations it considers pertinent.

11. On 07/29/2022 the PSSJD presented a statement of objections in which it highlighted the following considerations:

- That, " *In relation to the first allegation (...), mention that what he received in the CD was the clinical history (...) of the period that he requested from us in its entirety, and it is obviously the authentic and complete clinical history that we have in our computer system: no document from the clinical history has been manipulated or deleted. We need to certify that the format we used to deliver the story is the only format our computer system allows.*
- *The two documents provided by the interested party are fragments of the clinical history of 2006 and 2010. These documents were created with the previous computer program of Mental Health Services of Sant Boi (SIGSAM). This computer system was replaced by the current SAP in May 2017. We certify that the only way we currently have of sending the entire medical history of any patient is by printing in PDF format the various parts of the history (. ..). It may give the impression of fragmentation but there is no option to download all documents belonging to a story in a single file, at least until more system updates are made.*
- *In relation to the second request, mention that we asked him if he had any proof or document that we had not sent to him to correct any error that we might have made in sending it. We have checked the attached files and found no missing documents.*
- *As for the fragmentation of history, as we have already explained in the second section, it is the only possible computerized way at present to transmit this information. In relation to pagination, it is true that the file containing the clinical course, which consists of 363 pages, was not paginated. If it is more useful to you, we can page it and sort it by care service instead of by dates. As for the format of sending all files, we do not use mail when there are so many files as Outlook has a capacity limit and we would have to send several mails with the different files, which we think would make navigation more difficult for such a long history. If the interested party prefers, we can once again send the information this way or use the OneDrive tool if you have it, but you must take into account that they will continue to be files in PDF format of the different documents of the medical history (...)".*

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 of such data (hereafter, 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 person in charge of the treatment confirmation of whether or not personal data that concern them 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."

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establishes the following:

" 3. The person responsible for the treatment will provide the interested party with information related to his 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.
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 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 party with an access system remote , direct and secure access to personal data that guarantees permanent access to your data totality _ To this one effect , the communication from the person in charge to the affected in the manner as this can access the aforementioned system is enough to take care of the request _ of exercising 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.".

Apart from the previous regulation, in the case analyzed here, it is also necessary to take into account the applicable health regulations. Specifically, Basic State Law 41/2002, of November 14, on Patient Autonomy which establishes in its article 18 the right of access to the clinical history, in the following terms:

"Article 18. Rights of access to clinical history.

1. *The patient has the right of access, with the reservations indicated in section 3 of this article, to the documentation of the clinical history and to obtain a copy of the data contained therein. The health centers will regulate the procedure that guarantees the observance of these rights.*
2. *The patient's right of access to the clinical history can also be exercised by duly accredited representation.*
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 participating in its elaboration, which may oppose the right of access to the reservation of its subjective annotations."*

And with regard to the content of the clinical history, article 15 of said rule determines that:

1. *The clinical history will incorporate the information that is considered important for accurate and up-to-date knowledge of the patient's state of health. Every patient or user has the right to have a record, in writing or in the most appropriate technical support, of the information obtained in all their care processes, carried out by the health service both in the field of primary care and specialized care.*
2. *The clinical history will have the main purpose of facilitating health care, recording all the data that, under medical criteria, allow accurate and up-to-date knowledge of the state of health.*
   The minimum content of the clinical history will be the following:
   a) The documentation relating to the clinical statistics sheet .
   b) Entry authorization.
   c) The emergency report.
   d) History and physical examination.
   e) Evolution.
   f) Medical orders.
   g) The interconsultation sheet.
   h) The reports of complementary explorations.
   i) Informed consent.
   j) The anesthesia report.
   k) The operating room or birth registration report.
   l) The pathological anatomy report.
   m) The evolution and planning of nursing care.
   n) The therapeutic application of nursing.
   Ñ) The graph of constants.
   o) The clinical discharge report.
   Paragraphs b), c), i), j), k), l), ñ) i) will only be required in the completion of the clinical history when it comes to hospitalization processes or if it is available.
3. *When it comes to the birth, the clinical history will incorporate, in addition to the information referred to in this section, the results of the biometric, medical or analytical tests that are necessary to determine the filiation link with the mother , in the terms established by regulation.*
4. *The clinical history will be taken with criteria of unity and integration, at least in each care institution, to facilitate the best and most timely*

knowledge by the doctors of the data of a particular patient in each care process.

5. *When the health care provided is the result of violence against minors, the medical history will specify this circumstance, in addition to the information referred to in this section.*

For its part, article 13 of Catalan Law 21/2000, of December 29, on Patient Autonomy and Rights to Information and Clinical Documentation, determines the following regarding the right of access to the history clinic:

"Rights of access to the clinical history

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 said documentation, nor of the right of the professionals who have intervened in the preparation of this, who can invoke the reservation of their observations, appreciations or subjective notes. (...)"*

And this last rule provides for the following in article 10, regarding the content of the clinical history:

"Content of the clinical history

1. *The medical history must have an identification number and must include the following data:*
   a) Identification data of the patient and of the assistance:
   Name and surname of the patient. Date of birth. Sex. Usual address and telephone , in order to locate it.
   Date of attendance and admission, if applicable.
   Indication of origin, in case of referral from another care center.
   Service or unit in which assistance is provided, if applicable.
   Room and bed
   number , in case of admission. Doctor responsible for the patient.
   Also, when it comes to users of the Catalan Health Service and care is provided on behalf of this entity, the personal identification code contained in the individual health card must also be recorded.
   b) Clinical care data : Physiological
   and pathological family and personal history. Description of the disease or current health problem and successive reasons for consultation. Clinical procedures used and their results, with the corresponding opinions issued in the case of specialized procedures or examinations, and also the interconsultation sheets .
   Clinical course sheets, in case of admission.
   Medical treatment sheets. Informed consent sheet if relevant. Sheet of information provided to the patient in relation to the diagnosis and the prescribed therapeutic plan, if applicable.

Epicrisis or discharge reports , if applicable.
Voluntary discharge
document , if applicable. Necropsy report, if any.
In the case of surgical intervention, the operating sheet and anesthesia report must be included, and in the case of childbirth, the registration data.
c) Social data:
Social report, if applicable.

2. *In hospital clinical records, which often involve more than one doctor or care team, the actions, interventions and prescriptions made by each professional must be recorded individually.*
3. *The health centers must have a standardized clinical history model that includes the contents set out in this article adapted to the level of care they have and the type of service they provide.*

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, 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 PSSJD 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 one of the reasons for the complaint that started the present rights protection procedure, it was the fact of not having obtained the answer within the period provided for the purpose.

In this respect, it is certified that on 09/20/2021 the entity received an email from the person claiming (through his representative) by which he attached three forms for exercising the right to 'access to your personal data.

In accordance with article 12.3 of the RGPD, the PSSJD had to resolve and notify requests to exercise the requested right within a maximum period of one month from the date of receipt of the request . In relation to the question of the term, 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 article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party (as is the case) it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art. 40.4 LPAC).

Although in this case the responses to the referred requests were signed by the person in charge of the treatment, the PSSJD, on 19/10/2021, it should be noted that, given that the now claimant has affirmed that the notification by certified mail was produced on 10/25/2021

and that this fact has not been questioned by the PSSJD in the course of this procedure, it must be concluded that the claimed entity did not respond to the request for access within the period provided for in article 12.3 GDPR.

4. Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms that request of the person making the claim.

As a starting point, it should be borne in mind that the claimant now submitted three requests to the PSSJD with the aim of accessing his clinical history, clinical course and traceability. Then, in relation to the object of the claimant's requests, his right of access will be assessed. In this regard, requests that have as their object access to the clinical history and the clinical course will be analyzed jointly, given that, in accordance with article 10 of Law 21/2000, the clinical course forms part of the clinical history.

4.1 On the right of access to the traceability of the clinical history

The claimant requested traceability for the period from May 25 to 27, 2020, from February 2 to 6, 2021 and from June 11 to July 30, 2021. In this regard, in response to the request, the PSSJD dismiss the request arguing that it was not appropriate to provide " *the names and other personal data of professionals who have accessed your clinical history for reasons of their duties".*

Having established the above, it is necessary to take into account the specific terms of the request, which referred to the "traceability" of the clinical history. In this regard, Annex IV of Royal Decree 3/2010, of January 8, which regulates the National Security Scheme in the field of Electronic Administration, in force at the time the request was made , defines traceability as the " *property or characteristic consisting of the fact that the actions of an entity can be attributed exclusively to said entity".* In similar terms , Royal Decree 311/2022, of May 3, which regulates the National Security Scheme, and repeals the aforementioned Royal Decree 3/2010, defines traceability as the " *property or characteristic consisting in the actions of an entity (person or process) can be traced in an indisputable way to said entity".* For its part, the " CCN - STIC 803 ICT Security Guide . ENS [National Security Scheme]. Valoración de los sistemas", prepared by the National Cryptological Center , refers to traceability as " *being able to verify afterwards who has accessed, or modified, a certain information".* In accordance with the above, it should be stated that the traceability of accesses to a patient's clinical history includes information on the identity, position and/or category of the staff responsible for the treatment that accesses, the date and time of the accesses , center and module or unit from which it is accessed, and also know the recipients or categories of recipients to whom the clinical information was provided (that is, which entities or persons outside the organization were communicated to clinical data).

Now, of all that has been said to encompass the concept of "traceability" applied to access to the clinical history, only the communications made to entities or persons outside the scope of the data controller are part of the right of access provided for in article 15 of the RGPD.

Well, in relation to the response of the PSSJD, it should be noted that this Authority has highlighted in several resolutions and opinions (PT 60/2020, PT 21/2019, CNS 8/2019 and CNS 53/2019, among others), which is not part of the right of access provided for in article 15 GDPR, to know the identification of the staff working on behalf of the data controller (in

this case, the PSSJD) who has accessed the clinical history. And this because, in essence, this type of access cannot be considered a communication of data to third party recipients; and consequently, it cannot be included in section c) of the said article, as information that the affected person has the right to know in the exercise of this right (" *the recipients or the categories of recipients to whom they communicated or will be communicated personal data, in particular recipients in third parties or international organizations ").*

It is true that the Article 29 Group – made up of the Data Protection Authorities of the member states of the European Union, the European Data Protection Supervisor, and the European Commission: today replaced by the European Data Protection Committee – recommended to the member states of the European Union that they recognize the patient's right to know the information about who and when he has accessed his medical history, in order to generate confidence about the treatments carried out with his health data; and in similar terms this Authority has pronounced. But the truth is that the regulation of the right of access provided for in article 15 RGPD, does not contemplate this. Another thing is that the PSSJD, despite not having the legal obligation to do so, provides this information following the aforementioned recommendation.

In accordance with the above, the PSSJD should have informed the claimant of any communications that the entity may have made to third parties receiving the data, or in the event that no communication has occurred , informed of this end, since this information is part of the right of access guaranteed and regulated by article 15 of the RGPD.

In view of the above considerations, it is necessary to estimate the right of access of the person claiming to obtain the traceability of his medical history, but solely and exclusively with regard to knowing the information relating to any communications to third parties addressed to the data, or to obtain information about the non-existence of these.

4.2 On the right of access to the content of the clinical history

It is proven that the now claimant submitted two requests to the PSSJD with the aim of obtaining his clinical history, from 03/09/2012 to 09/19/2021, and the clinical course referred to the same period of time .

Well, as noted, to the extent that the clinical course is part of the content of the clinical history, the access requested in both applications will be assessed jointly.

In these terms, it should be noted that, although the claimed entity sent the now claimant a CD, which allegedly contained the requested information, the now claimant initiated this rights protection procedure, precisely because it was not agreement neither with the information received, nor with the format used to provide the information.

4.2.1 In relation to the content of the documentation delivered by the PSSJD

It is clear from the background that the claimed entity gave the now claimant, prior to the start of this procedure, a CD that gave a response to the request for access to the medical history. Likewise, the PSSJD has reiterated, within the framework of this procedure, that the information that was transmitted is the " *authentic and complete clinical history that we have in our computer system: no document has been manipulated or deleted the clinical history".*

In turn, the complaining party, through a letter submitted on 07/18/2022 to the Authority, made it clear that the information received did not include, among other documentation, the physiological and pathological family and personal history, sheets of clinical course, in case of admission, clinical procedures used and their results, medical treatment sheets, informed consent sheet, epicrisis reports or information sheets provided to the patient in relation to the diagnosis and the prescribed therapeutic plan, if applicable Likewise, he also made it clear that the documentation relating to the clinical course would have been sent to him without pagination.

In this respect, this Authority required the now claimant to provide the evidence or indications it considered relevant for the purposes of demonstrating that the claimed entity had more information than what would have been included in the said CD. Despite what has been said, the claimant has not provided any evidence that could cast doubt on the statements of the PSSJD relating to the fact that the CD it delivered to the claimant contained all the information it had, reason for which, it must be understood that the information that the entity gave him is all that works in his power.

On the other hand, the PSSJD has stated that the information relating to the clinical course was provided to the complaining party dated (indeed, in the index of the CD included in the proceedings, the dates of the documents contained therein are stated), and has offered to deliver it again, ordered by dates and care service. In this regard, it should be noted that, the fact of not delivering the documentation in a single paged document (as claimed by the now claimant), in principle would not contravene the requirements established in article 12 of the RGPD when it provides that " *The responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible form , con un lenguaje claro y sencillo"* , this always and when the documentation it contains is perfectly identified and dated, as was the case.

In view of the above considerations, it is appropriate to reject the claim of the claimant here regarding the delivery of the documentation that makes up the clinical history, to the extent that the claimed entity has claimed to have delivered all the information of what it has, duly dated, and given that there are no indications to cast doubt on that statement, without prejudice to what will be said below about the format.

4.2.2 In relation to the format of delivery of the information

In accordance with the antecedents transcribed in this Resolution, it is certified that the now claimant requested on 09/20/2021 to the claimed entity, that the information subject to the requests be sent to him by email . It has also been proven that, on 25/10/2021, the PSSJD responded to the exercise of the right of access by means of a CD, which was sent to the now claimant by certified mail. As things stand, there is no doubt that the claimed entity responded to the referred requests, by a different means than the one chosen by the now claimant.

Regarding these facts, the PSSJD, in the framework of this procedure, has argued not to have used email to send the aforementioned documentation, given the size of the files that contained the information. Despite the above, the claimed entity has offered to provide the

information via e-mail, despite the fact that this may make it even more difficult to navigate through " *such a long clinical history* ", or use the OneDrive tool for carry out the shipment.

In this regard, it should be noted that the RGPD, with regard to the means to be used by the data controller to attend to the right exercised by the interested party, in its article 12.3 establishes the rule that the information must be provided by channel that the interested *party has indicated, even when it does* not match the channel with which the latter has exercised the right *interested party requests that it be provided in another way"*] .

In relation to the above, article 15.3 of the RGPD contemplates different ways to exercise the right of access, determining that *"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 it be provided in another way, the information will be provided in a commonly used electronic format."* In turn, article 28 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the LOPD (hereafter, RLOPD), in force where it does not contradict the RGPD, attributes to the interested person the right of choice, by guaranteeing the right to choose to receive the information by means of its display on the screen, in writing, by mail, fax, e-mail or other electronic communication systems or any other system , although the right of option is conditional on the system chosen by the interested party being suitable for the configuration of the file or the nature of the treatment offered by the person in charge.

In fact, the regulation governing the right of access is clear when it confirms the right of any person to obtain the information requested by electronic means, as was the case of the person making the claim here. The claimant's express choice of a certain medium to receive the requested information, in this case, email, was not considered in the PSSJD's response and this because the claimed entity chose to provide the information by of a CD , sent by certified mail.

Therefore, according to what has been stated here, what the PSSJD should have done, given the impossibility of attaching all the files in a single email due to their weight, is to either provide a link website by e-mail, which would allow access to the aforementioned documentation, or to send successive e-mails with the reference documentation.

In view of the above, it cannot be understood given the exercise of the claimant's right of access - and consequently, it is necessary to estimate his claim -, regarding the format in which the information will be given to him, reason for which the PSSJD must be required to deliver to the claimant the documentation requested by email, in the established terms.

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 to do effective exercise of the right in the terms set forth in the preceding legal basis. Thus, 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 right of access to the claimant in the following terms:

- With regard to the traceability of the clinical history, provide the information relating to the communications made to entities or persons outside the scope of the Sant Joan de Déu Health Park, and if there is none, inform this end.
- Provide a copy of the Clinical History (which includes the clinical course) by e-mail, either by attaching a link containing the aforementioned information, or by means of successive e-mails, if the size of the files does not allow do it in a single message. At this point the PSSJD is reminded that it has offered to provide the documentation ordered by date and service.

Once the right of access has been made effective in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must report to the Authority.

For all this, I resolve:

1. Partially estimate the guardianship claim made by Mrs. (...) against the Sant Joan de Déu Health Park and declare the claimant's right to obtain the information related to the requested clinical history, via email, and to receive the information relating to traceability, in the terms established in the 4th and 5th legal basis

2. Request the Sant Joan de Déu Health Park 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 4th and 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 Sant Joan de Déu Health Park and the claimant.

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,