

File identification

Resolution of the rights protection procedure no. PT 48/2022, urged against the Medical Emergencies System, SA.

Background

1. On 26/05/2022 the Catalan Data Protection Authority received a claim made by Mrs (...) against the Sistema d'Emergències Mèdiques, SA, (hereinafter, SEM), for not attend to the request to exercise the right of rectification, which is provided for in article 16 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD).

The claim showed that on (...) /10/2020 the daughter of the claimant required urgent health care for her mother -here claimant-, and that two mobile units of the urgent health transport service of the SEM went to the claimant's home. Following this service, the technicians of each mobile unit issued an *attention report* at 9:15 p.m. and at 9:16 p.m.

The complainant stated that these two reports contained his erroneous data. Specifically:

On the one hand, he stated that both reports contained an incorrect telephone number ("... ") and an incomplete address ("c. ..."), without specifying, however, which was the correct number and which information was missing from the registered address.

On the other hand, he stated that the following medical information was wrong:

- In the report issued at 21:15 hours: in the assessment data section, it was listed as health problem 1: *"anxiety crisis"*.
- In the report issued at 21:16 hours (by the unit assisted by a doctor and a nurse): in the anamnesis section it appeared *"under investigation for blood in stool"* and *"anxiety disorder"*, and in the section on diagnostic guidance, *"anxiety crisis"*.

The person claiming provided a copy of these two reports, as well as a screen print of what appeared to be a message he would have sent on 06/08/2021 through the *eConsulta service* of the *LaMevaSalut space* addressed to a nurse, in who expressed his complaint about the information contained in these two reports, noting that: *" the reason for the EMS to come was sudden loss of strength and dizziness, falling to the floor as a result, and the report adds anxiety"*.

In the letter of claim, the claimant stated that, although he had exercised the right of rectification on numerous occasions, both directly through telephone calls to the SEM, and through his doctor and "the regional de", *"they have not yet rectified the error"*, and also that: *"I have been dealing with this matter for many months and still not it has been resolved, that's why I'm filing the complaint"*.

2. On 09/20/2022, the claim was transferred to the SEM so that within 15 days it could formulate the allegations it deemed relevant.

3. The SEM formulated allegations by means of a letter that was received by the Authority on 04/10/2022, in which it set out, in summary, the following:

- In relation to the SEM's delay in responding to the rectification request:

"the only request received by this public company was that of the claimant. This was received via email dated March 10, 2022, to which a response was given to the effect that the report could not be rectified."

(...)

There is no request from the claimant's doctor or from the Health Region of (...).

(...)

The claimant, on March 25, 2022, reiterated her request for rectification, to which the same answer was given (...)"

- In relation to the inaccuracy of the data provided by the person making the claim:

"(...) the incident was reviewed by the User Service Unit, both the data contained in the Central Coordination application as well as the voice recordings and the report, and it was not he appreciated no mistakes.

If the doctor who treated her gave a diagnostic guidance (not a diagnosis given that it is an emergency assistance) the report issued by this professional cannot be modified based on the statement of the person concerned."

- In relation to the failure to provide documentation proving the error:

" There is no evidence (...) that the claimant has provided any report from her doctor that supports that the care report contains any errors."

- In relation to a letter from the ICS in which it responded to various requests made by the person here claiming before various entities or bodies on dates subsequent to the request that is the subject of this procedure:

"Subsequently, the SEM became aware through the Catalan Health Institute that the claimant had made claims to different bodies.

The ICS responded together to all of them indicating to the (...) that the rectification can only be carried out when the error can be reliably verified, providing the reports certifying the error and/or that the professional who has made the diagnosis can verify the error, supported by visit and medical tests if applicable."

The SEM provided several attached documents, including the following:

3.1.- A report addressed to the Authority, drawn up by the Head of the SEM User Service Unit, where the requests and responses made are set out in chronological order, incorporating images of some they Regarding the requests and responses referring to the right of rectification, the following was noted:

- That on 10/03/2022 the claimant sent an email to SEM (sem@gencat.cat) requesting the rectification of the two reports issued on (...)/10/2020.

- That the SEM opens a file (no. ...) and *"reviews sitrem and no identification and address errors are noticed. The report and voice recordings were also reviewed, and we verified that the affiliation data, address and data in the report correspond to the incident commented on .*
- That on 03/18/2022 the SEM responded, by means of a letter of the same date, in which it was pointed out, for what is now of interest, that: *" Regarding the rectification he is requesting we must tell him, although considering his reasons, that it is not contemplated to modify a report that has been completed in the course of an assistance and transfer."*
- That on 03/25/2022 the claimant sent the SEM a second email reiterating the rectification request, and on 03/25/2022 the SEM sent him an email, which contained a document attachment in which a reiterative response to the previous one was given.
- That on 03/29/2022 the SEM informed the claimant by telephone about the procedure he should follow with regard to requests for rectification, as well as the documents he should provide.
- That on 25/04/2022 the ICS informs the SEM that it has received *"Arsopol Law"* , *"but without any report"* .
- That, by letter dated 08/29/2022, the ICS responds to 11 requests made by the claimant between the months of May and June 2022 (with exit registration dated 09/08/2022), by which he is informed, as far as he is concerned, of the following:

"We have received your letters submitted through different channels and addressed to different organizations and which we detail below:

May 20, 2022 and with registration number (...) presented in the Virtual Office of Procedures, request for rectification of Service information of Medical Emergencies (...),

May 23, 2022 and with entry registration number 360 presented in the (.sic) (...), request from the Primary Care Team rectification (...),
(...)

Reviewed the content of your messages and checked the data we have:

With regard to requests for rectification, we inform you that in accordance with current regulations, health data can only be rectified when the error can be reliably verified, providing the reports certifying the error and/or that the professional who has made the diagnosis can check the error of the diagnosis supported by visit and medical tests if applicable. We already provided you with this information in our letter of May 12, 2022, departure registration number (...)"

3.2.- A letter from the ICS dated 03/05/2022, issued in response to a request made by the person claiming on 08/04/2022, to delete certain data that appeared in the two reports of SEM mentioned, published in the Història Clínica Compartida in Catalunya (henceforth, HC3), and which everything seems to indicate that it would be the same data that are the

subject of the request for rectification of the one that gives rise to the present guardianship procedure .

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. regulatory framework

Article 16 of the RGPD regulates the right of rectification in the following terms:

"The interested party will have the right to obtain without undue delay from the controller the rectification of inaccurate personal data concerning him. Taking into account the purposes of the treatment, the interested party will have the right to complete the personal data that are incomplete, including by means of an additional declaration".

For its part, article 14 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 of correction:

"When exercising the right of rectification recognized in Article 16 of Regulation (EU) 2016/679, the affected person must indicate in his request which data he refers to and which correction must be made. It must be attached, when necessary, the supporting documentation of the inaccuracy or the incompleteness of the data being processed".

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 number of applications (...). 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. "

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. Formal questions.

First of all, it is appropriate to refer briefly to the complaint made by the person claiming in his letter of claim, referring to the fact that this person would have requested the SEM to rectify his data repeatedly and for months, without success.

In this regard, it should be pointed out that the purpose of this guardianship procedure is solely to review the actions of the SEM in response to the request for rectification made by the person making the claim, since the SEM is the entity against which the claim has been made. For this reason, the performance of other entities or bodies, such as the Catalan Institute of Health (ICS) or the Department of Health, will not be analysed.

Well, once the documentation provided by the SEM and the claimant has been reviewed, it should be noted that in the present procedure the claimant has not proven the delay invoked, and, on the contrary, the SEM has provided various documentation from which it is inferred a diligent action in its response, and in any case a response made within the legally provided period. Specifically, the documentation provided by the SEM shows that it was not until 10/03/2022 that the claimant sent an email to the SEM requesting the rectification of the two reports issued on (...) / 10/2020, and that the SEM gave a response on 03/18/2022, that is to say, six days later (an answer he reiterated on 03/25/2022, the same day as the person here claiming reiterated his request), and therefore within the period of one month provided for in article 12.3 of the RGPD to respond to the rights provided for in articles 15 to 22 of the RGPD, among which the right of rectification.

It is appropriate to make a clarification regarding the message that the claimant would have presented on 08/06/2021 through the LaMevaSalut eConsults service. In this regard, it cannot be understood that this message was ignored by the SEM, since eConsults is a space where users can consult some of the public health professionals assigned to them. In the present case, the person making the claim here sent a message addressed to his assigned nurse of the corresponding Primary Care Center (CAP), dependent on the ICS. It was not, therefore, a message addressed to the SEM. Therefore, the person required to respond to this request made through the eConsultes space would be the person responsible for the treatment in that case, which everything seems to indicate would be the ICS (in the event that the claimant is referred to the EMS reports that appeared in the clinical history accessed from an ICS Primary care center). On the other hand, it should be borne in mind that if the request made by the person making the claim also had as its object the rectification of the reports published in his HC3, to the extent that the Department of Health is responsible for the treatment with respect to the personal data incorporated in the HC3, the Department of Health would be the person obliged to respond to the request for rectification of the reports published in the HC3.

4. Matters of substance.

The claim that is resolved here is formulated with respect to a request to exercise the right of rectification that the person making the claim presented to the SEM on 03/10/2022, and which he reiterated on 03/25/2022 .

Next, it will be analyzed if the SEM's negative response to the request for rectification made by the person making the claim was in accordance with the regulations set out in the 2nd legal basis, and if the requested rectification proceeds.

By means of a letter dated 03/18/2022, the SEM denied the request for rectification made by the claimant, noting, as far as it is now concerned, the following (background 3.1):

"Regarding the rectification he is requesting, we must tell him, despite his reasons, that it is not contemplated to modify a report that has been completed during an assistance and transfer."

In this regard, and after analyzing the content of the SEM's attention reports, it should be noted that the answer that the SEM gave to the person making the claim ("*Regarding the rectification he is requesting we must tell him, despite considering the his reasons, that it is not contemplated to modify a report that has been completed during an assistance and transfer*") does not comply with the law, and this because these reports refer to personal data, and therefore there is the possibility that erroneous data are recorded (such as an incorrect CIP number), or that it is necessary to complete them taking into account the purpose of the treatment. So, in the event that the existence of an error is proven, it is necessary to enable means to correct the erroneous data or to complete it.

Another thing is the reasons for rejection that the SEM has put forward to the Authority in the framework of the present guardianship procedure, which are addressed below.

First of all, a prior and common consideration must be made to all the data that was the subject of the rectification request. As indicated, article 16 of the RGPD obliges the data controller to proceed with the rectification of personal data when these are inaccurate or incomplete. However, it should be noted that article 14 of LOPDGDD requires that the request for rectification clearly indicate which data it refers to and the correction that must be made, and in addition, when it is precise, it must be accompanied by documentation justifying the inaccuracy or incompleteness of the data being processed. In short, that, in certain cases, to be able to demand the rectification of a piece of data, the error committed or its incomplete nature must be proven. Well, it is stated that, in relation to the rectifications requested, the person making the claim here has not accompanied documentation proving the allegedly erroneous or incomplete nature of the data.

Based on this prior consideration, it is necessary to analyze the rectifications interested by the person making the claim.

4.1.- About the telephone number recorded in the two SEM reports.

With regard to this data, in the letter of claim the person claiming has limited himself to indicating: *"telephone is not correct"*, without indicating what his telephone number is, and he has not even indicated whether the error pointed out affected some or all of the numbers recorded in the SEM reports.

For its part, in the framework of the present guardianship procedure, the SEM has stated that it has reviewed this data and maintains that it is correct.

The Authority has noted that the number recorded in the letter of claim is totally different from the one appearing in these reports. But this alone is not enough to conclude the inaccuracy of this data, since, among other reasons: the SEM reports are dated (...)/10/2020, while the claim presented to the Authority is dated 05/26/2022, so it cannot be ruled out that at the time these reports were issued the person claiming had this telephone number. Nor can it be ruled out that the telephone number corresponded to a family member of the claimant, and that the emergency medical transport technicians who attended to her had recorded it as a contact telephone number.

Now, although the reasons indicated prevent this Authority from making a pronouncement on the accuracy or inaccuracy of the telephone number recorded in the aforementioned reports, the truth is that, given the fact that the person making the claim here had not accompanied his request for the rectification of any document attesting to the inaccuracy it invoked, since it was a piece of data whose correction was not subject to any subjective assessment, what was relevant was to formally require it to amend its request. In this sense, article 25 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on the protection of personal data (of application in that it does not oppose the RGPD or the LOPDGDD), regulates the procedure for exercising rights, and establishes in point 3 that: *"In the event that the request does not meet the requirements specified the first section, the person in charge of the file must request the amendment"*. In the first section referred to in point 3, there is the contribution of *"Documents supporting the request that you make, if applicable"*, a documentation requirement that must be related to that established in article 14 of the LOPDGDD.

In this way, given the request for rectification made by the claimant on 10/03/2022, the SEM should have sent him a request to amend the request, so that he would provide the documentation proof of the inaccuracy pointed out, and to have resolved in view of the documentation provided, or reject the rectification once the period granted for that purpose has passed without providing it.

The omission of this action on the part of the SEM, entails the estimation of the claim regarding the request for rectification of the telephone number recorded in the two reports, and consequently the SEM should be required to request to the person claiming here to present the documentation that justifies the inaccuracy of this data, so that it resolves based on the result of this action to amend the request.

4.2.- About the address recorded in the two SEM reports.

The same answer deserves the claim referred to the rectification of this data. In the letter of claim, the claimant has limited himself to indicating: *"address is incomplete"*, without indicating what information would have been omitted.

For its part, in the framework of the present guardianship procedure, the SEM has stated that it has reviewed this data and maintains that it is correct.

The Authority has noted that in the letter of claim presented to the Authority, the same address is included as in these SEM reports, with the difference that the flat number is omitted in the SEM reports.

Now, and for the same reason noted before, in the face of the request for rectification of this data, the SEM should have initiated a procedure to amend the request, and require the person making the claim to provide the documentation proving the inaccuracy of the registered address with the information that needed to be completed.

The finding of this omission entails the estimation of the claim also with regard to the request for rectification of the incomplete address, and consequently the SEM must be required to formally request the amendment of the request, in order to solve it according to the result of this.

4.3. About the health data recorded in the two SEM reports.

In the various letters that the SEM has presented to the Authority, it has come to point out (background 3.1) that the recorded health data cannot be modified because they do not contain a diagnosis, but a mere "diagnostic guidance", issued in the framework of urgent health care. Adding that he has checked this information and it is correct.

With this statement, the SEM would point out that the recorded information would effectively obey the initial medical assessment carried out by the doctor who treated the claimant, and that therefore it cannot be considered inaccurate data.

Certainly, the hypothetical fact that later in a hospital or other type of medical assistance, a different - firm - diagnosis could have been issued, by itself would not make the data relating to the indicative diagnosis recorded in the EMS report inaccurate, since what would make this indicative diagnosis inaccurate would be if a medical report was provided that confirmed the incorrectness of this information, that the doctor who issued it had recognized a medical or other type of error, or in the last extreme that "prima facie" turned out to be information lacking any logic or sense, or clearly inconsistent with the rest of the information contained in the same reports. But as has been said, the SEM has stated that they reviewed this data and that they confirmed its correctness, in the sense that they have confirmed that this was the initial assessment of the doctor who treated the claimant. And the Authority considers that the information contained in the two reports does not lack any logic or sense, nor is it incongruous in view of the rest of the information contained.

Secondly, and as noted, article 14 of the LOPDGDD requires, as far as we are concerned, that the request for rectification be accompanied by documentation justifying the inaccuracy of the data being processed. And on this the SEM has stated that on 29/03/2022 it informed the person claiming about the procedure and the documentation that needed to be provided to request the rectification of the controversial health data, but that he did not provide it, neither before the SEM, nor before the ICS. Specifically, the SEM claims not to have received any report from his doctor or from the *regional of (...)*, referring to the ICS centers located in the province of (...).

On the other hand, the person making the claim has also not provided the Authority with any supporting documentation of the alleged error committed by the doctor or the people from the EMS who treated her on 07/10/2020.

So things are, to the extent that these health data do not refer to objective facts whose inaccuracy could easily be highlighted, but rather respond to assessments or assessments of medical staff issued in urgent health care, which are not lack any logic or sense nor are they clearly incongruous, and in respect of which the person making the claim has not provided a contradictory medical report evidencing their incorrectness, the claim must be dismissed with regard to the request for rectification of the data of Health.

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 SEM so that, within 10 counting days from the day after the notification of this resolution, request the person here claiming the amendment of his request rectification request regarding the telephone number and address recorded in the reports dated 10/07/2020, in the terms set out in legal basis 4 (4.1 and 4.2). And based on the result obtained, or in any case once the deadline granted for the amendment has been exceeded without having provided supporting documentation of the incorrectness or inaccuracy of this data, give an answer to the person claiming within the legally provided deadline .

Once the right of rectification has taken effect in the terms set out and the person making the claim has been notified, in the following 10 days the SEM must report to the Authority.

For all this, I resolve:

1. Partially estimate the guardianship claim made by (...) against the Sistema d'Emergències Mèdiques, SA. regarding the request to correct the data relating to the telephone number and address recorded in the two attention reports dated (...) / 10/2020, with the scope indicated in the fundamentals of right 4.1 and 4.2. And dismiss the claim regarding the request for rectification of the health data, for the reasons indicated in the legal basis 4.3.
2. Request the Sistema d'Emergències Mèdiques, SA so that, in relation to the telephone number and address recorded in the two care reports dated (...) / 10/2020, to give effect to the right of rectification exercised by the claimant, in the form and terms indicated in the 5th legal basis. Once the right of rectification has taken effect, within the following 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the Sistema d'Emergències Mèdiques, SA and to 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,

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