

File identification

Resolution of the rights protection procedure no. PT 67/2022, petition against the Department of Health.

Background

1. On 06/21/2022, the Catalan Data Protection Authority received the letter from Mr. personal, which he had previously exercised before the Department of Health.

The claimant provided the request addressed to the Department of Health on 03/18/2022, the object of which is transcribed as follows: "*My clinical data/clinical history be accessible only and exclusively by "health professionals" (ie doctors and nurses). In no case are they accessible to the administrative staff, the Citizens' Management Office, IT staff or others. The Dept. _ Health as the superior hierarchical body of the CAPS and Hospitals of Catalonia network must allow me to exercise this right globally and not individually, whether I have visited or not, in all the CAPS and Hospitals of Catalonia*".

2. On 07/12/2022, the claim was transferred to the Department of Health so that within 15 days it could formulate the allegations it deemed relevant.

3. On 06/10/2022, the Authority again transferred the claim to the Department of Health and granted it a new deadline of 15 days to present allegations, given that the position of the entity claimed here was particularly relevant for the resolution of the present procedure.

4. On 02/11/2022, the Department of Health formulated allegations through which it stated, in summary, the following:

- That, the request was received by the Department, and once analyzed, it is considered that it may fit within the framework of an exercise of the right of opposition provided for in article 21 RGPD and 18 LOPDGDD.
- That, the request to exercise the right would not have been attended to within the legal term provided for that purpose.
- That, the Department of Health has issued a resolution dismissing the right of opposition exercised by the person now claiming on 03/18/2022, proceeding with its notification.
- That, the claim should be dismissed, taking into account the following regulations: Law 14/1986, of April 25, General of Health (LGS), regarding the operation of the Health System (arts. 7 and 16); Law 15/1990, of 9 July, on the health system of Catalonia (art. 2); Law 44/2003, of 21 November, on the organization of health professions (art. 9, 6.2 a, 7.2 a); Royal Decree 1231/2001, of November 8, which approves the General Statutes of the Collegiate Nursing Organization of Spain of the General Council and Organization of the professional activity of nursing (art. 54); Decree 157/2017, which establishes the common technical and sanitary requirements and guarantees of health centers and services and the procedures for their authorization and registration (art. 17 and 19); Law 41/2002, of 14 November, basic regulation of patient autonomy (art. 16).
- That, in accordance with the "Data Protection Guide for patients and users of health services" of this Authority, the staff - both health and non-health - may have access to the personal data of users of the services of health in the context of the functions assigned to them within the Health System, under the corresponding duty of confidentiality.

Ultimately, the Department's statement of objections argued that, in order to guarantee the proper functioning of the health system, the multidisciplinary cooperation of people with different professional profiles is required, including health profiles (medical or nursing), such as administrative or IT staff. Personnel who must be able to access the information that is essential for them to carry out their tasks, subject to the duty of confidentiality. In this regard, the Department concluded the following:

"(...) it is unfeasible to restrict the authorization of access to the personal data of patients exclusively to personnel who meet the condition of health professionals with the exclusion of administrative or IT personnel since this would imply a serious distortion in the operation and organization of the Health system with direct impact on healthcare provision. It must be taken into account that the administrative staff and IT staff, within the scope of their functions and competences, must also be able to access those personal data of patients that are indispensable for the correct performance of the tasks assigned to them. In any case, the provision of the health services of the Health System must be presided over by the principles of effectiveness, speed, economy and flexibility, and the rules for their use must be the same for everyone".

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 21 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 circulation thereof (in hereinafter, the RGPD), regulates the right of opposition in the following terms:

" 1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of), including the elaboration of profiles on the basis of said provisions. The controller will stop processing the data personal, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims.

2. When the processing of personal data is aimed at direct marketing, the interested party will have the right to object at all times to the processing of personal data that concerns him, including the creation of profiles to the extent that it is related to said marketing .

3. When the interested party opposes the treatment for direct marketing purposes, the personal data will cease to be processed for these purposes

4. At the latest at the time of the first communication with the interested party, the right indicated in sections 1 and 2 will be explicitly mentioned to the interested party and will be presented clearly and apart from any other information.

5. In the context of the use of services of the information society, and notwithstanding the provisions of Directive 2002/58/EC, the interested party

may exercise his right to object by automated means that apply technical specifications.

6. When personal data are processed for scientific or historical research purposes or statistical purposes in accordance with article 89, paragraph 1, the interested party shall have the right, for reasons related to their particular situation, to oppose the processing of personal data that concern, unless it is necessary for the fulfillment of a mission carried out for reasons of public interest.

For its part, article 18 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 opposition:

"1. The right of opposition, as well as the rights related to automated individual decisions, including the creation of profiles, will be exercised in accordance with what is established, respectively, in articles 21 and 22 of Regulation (EU) 2016/679."

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 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 applications. 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. (...)"

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 Department of Health resolved and notified, within the period provided for by the applicable regulations, the right of opposition exercised by the person making the claim, since precisely the reason for his complaint which started the present rights protection procedure, it was the fact of not having obtained a response within the period provided for the purpose.

In this respect, it is certified that on 03/18/2022 a letter from the claimant was received by the entity through which he exercised the right of opposition with respect to his personal data.

In accordance with article 12.3 of the RGPD, the Department of Health 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 the question of the term, it should be borne in mind that in accordance with article 21.3 b) of the LPAC and article 41.7 of 7 of Law 26/2010, of August 3, on the legal regime and of procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party (as is the case) starts from the date on which the sole 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 (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least have occurred the duly accredited notification attempt (art. 40.4 LPAC).

Well, the Department of Health has acknowledged that it did not respond to the request to exercise the right of opposition presented by the now claimant, within the one month period provided for that purpose. And, in this regard, he has informed the Authority that he has proceeded to notify the now claimant of the resolution of rejection of his request to exercise the right of opposition (which accompanies together with his letter of allegations), in the framework of this procedure.

Consequently, since the claim was based on the lack of response to the request to exercise the right of opposition, it is necessary to declare that the Department of Health did not resolve and notify said request in a timely manner submitted by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

4. Once the above has been established, 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 the opposition to the processing of the data in the terms that · legality of the person claiming.

As a starting point, it should be borne in mind that article 21 of the RGPD regulates the right of opposition as the right of the interested person to oppose, at any time, for reasons related to their particular situation, to that your personal data is processed, when the processing is carried out to fulfill a mission carried out in the public interest, when it is carried out to

exercise public powers, or to satisfy legitimate interests, including profiling. For its part, the controller must stop processing personal data, unless it proves compelling legitimate reasons that prevail over the rights, freedoms and interests of the person concerned, or to formulate, exercise or defend claims.

The right of opposition is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. This is why the limitations to this right of opposition must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. Thus, the causes of denial of the right of opposition are regulated in articles 21 paragraphs one and six, and 23 of the RGPD. The limitations referred to in article 23 of the RGPD must be provided for *"through measures legislative"* (art. 23.1 RGPD) .

Well, the claimant requested that his *"clinical/clinical history"* data be accessible *"solely and exclusively by "health professionals" (that is, doctors and nurses)"* and objected to other people, including which included *"administrative, Citizen Management Management and IT"* process your health data. Likewise, he also urged the Department of Health to allow him to *"exercise this right globally and not individually, whether he has visited me or not, at all CAPS and Hospitals in Catalonia"*.

From the wording of the request it can be inferred that the claimant now intends to exercise his right of opposition in relation to the processing of his health data, by personnel who do not hold the condition of *"health professional"*, in all primary care centers and Hospitals in Catalonia. However, for what is of interest here, the claimant does not claim to have exercised the right before each person in charge of the treatment, but claims that it is the Department that allows him to exercise this right *"globally and not individually"* .

In this regard, article 16.1 of Law 32/2010 provides that, before filing a claim for the protection of rights, it is required to certify that the right has been exercised before the person responsible for the file or treatment, with the requirements indicated in article 25.1 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the deployment of the LOPD. To the above it should be added that neither the LOPDGDD, nor the RGPD, contain any provision that obliges any entity to attend to the right of opposition exercised in relation to data for which it is not responsible. In relation to this, the claimant can consult the electronic headquarters of the Department of Health for the register of processing activities, which includes those personal data treatments for which the said Department is responsible.

Having established the above, the pretension of the now claimant, to exercise his right of opposition in a *"global"* way, for *"all the CAPS and Hospitals of Catalonia"* cannot succeed.

Therefore, the present resolution will focus on assessing whether the right of opposition should be considered regarding the treatment of your *"clinical data/clinical history"* by the staff of the entity claimed here that does not hold the status of *"professionals of health"* , and this, in accordance with what has been said, in relation solely and exclusively to the treatment activities for which the Department of Health is responsible, and among these and in view of what was stated by the here claiming in your request, those that would have a direct relationship with the provision of health services.

As a preliminary matter, it should be noted that, article 21 of the RGPD provides that the interested person may object to the processing of his personal data, for personal reasons,

provided that his data is the subject of a processing based in article 6.1 sections e) of). And, in relation to this, the aforementioned precept provides that the person in charge must stop processing personal data, unless he proves compelling reasons that prevail over the interests, rights and freedoms of the person concerned, or for the formulation, the exercising or defending claims.

Therefore, in accordance with article 21 of the RGPD, the reasons related to the particular situation of the person who exercises his right of opposition must be taken into account by the data controller.

In this regard, it is worth saying that the person claiming has not invoked any circumstance or personal situation that motivates the opposition to the processing of their data in the terms requested, which is why neither the Department of Health, nor this Authority, has had the opportunity to consider the possible rights and interests affected.

On the other hand, from the terms of the request, it can be inferred that the present claimant's claim is that no data relating to his health - neither present nor future - can be accessed by people other than " *health professionals*".

Well, it should be taken into consideration that the right of opposition does not operate automatically with respect to any data or information, but rather, as has been explained, it is necessary for the interested person to express well-founded and legitimate reasons relating to his personal situation, and that no legal exception applies; therefore, depending on the specific information being treated, there may be compelling reasons that justify the dismissal of the opposition to the processing of your data. And this, not only in order not to compromise the quality of future assistance for the affected person, but also because of the repercussions that the eventual opposition may have on the efficient use of public resources of the health system or, even public health reasons.

In relation to this, the Department of Health has defended that, restricting access to " *clinical data/clinical history*" only to personnel who meet the status of health professional, would imply a serious distortion in the functioning and organization of the health system given that, there are other professional profiles that require access to health data for the exercise of their functions. Likewise, the claimed entity has recalled the duty of confidentiality in accordance with which the personnel who process this type of data must act.

Regarding the duty of confidentiality, it should be noted that, article 5 of Law 21/2000, of December 29, on the rights of information concerning the health and autonomy of the patient, and the clinical documentation , provides for the right of every person to preserve the confidentiality of data relating to their health, in the following terms:

- "1. Everyone has the right to respect the confidentiality of data relating to their health. Equally, you have the right that no one who is not authorized can access it if it is not protected by the legislation in force.*
- 2. (...)"*

And, article 11 of the same rule, foresees that the personnel who take care of the administration and management tasks of the health centers can access the data of the clinical history that are related to the exercise of their functions. And, in relation to the duty of secrecy, it provides the following:

"6. All staff who use their powers to access any type of clinical history data remain subject to the duty to keep it confidential.

In similar terms, article 16 of Law 41/2002, of November 14, basic regulation of patient autonomy and rights and obligations, in matters of information and clinical documentation, establishes the following:

" 4. The administration and management staff of the health centers can only access the clinical history data related to their own functions"

From the aforementioned precepts it follows that access to health data by non-health professionals, for administrative or management purposes, can be considered a necessary task in the course of the care process, when said access is linked to the development of their tasks.

In this regard, as the Department has argued, the eventual restriction on the claimant's health data, by different professional profiles, would mean a serious distortion in the functioning and organization of the health system, with direct impact on the healthcare provision. Also along these lines, article 9 of Law 44/2003, of 21 November, on the organization of health professions, provides for the following (the emphasis is ours):

"2. The team of professionals is the basic unit in which the professionals and other personnel of the healthcare organizations are structured in a single or multi-professional and interdisciplinary way to effectively and efficiently perform the services that are required of them"

Therefore, it must be concluded that one cannot object to the processing of all of one's health data, by all the people who perform administrative, IT or citizen management or IT functions, given that this opposition would distort the normal functioning of the health system, which is why the present claim must be dismissed.

Having said that, nothing prevents the person claiming here from exercising his right of opposition to certain specific people being able to access his clinical data, indicating to that effect the reasons that would substantiate this opposition, in accordance with what has been set forth above. And, as has also been said, the person claiming will have to exercise this right by addressing their request to each of the entities that are responsible for the treatment of their health data.

For all this, I resolve:

1. Dismiss the guardianship claim made by (...) against the Department of Health.
2. Declare extemporaneous the resolution of the Department of Health, by which it dismisses the opposition request made by Mr. (...), for not having responded within the period established in the applicable regulations.
3. Notify this resolution to the Department of Health 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,

Machine Translation