

File identification

Resolution of the rights protection procedure no. PT 68/2022, petition against the Catalan Health Institute.

Background

1. On 06/21/2022, the Catalan Data Protection Authority received a letter from (...) (in hereinafter, the person making the claim), for which he formulated a claim for the alleged neglect of the right of access to his clinical history and traceability, which he had previously exercised before the Catalan Health Institute (hereinafter, ICS).

In order to certify the exercise of this right, the claimant provided a copy of the following documentation:

- 1.1. The request for access to the medical history, with stamp of entry to the ICS no. (...)/(...)/2022, corresponding to the period between March 2006 and March 2022.
- 1.2. The request for access to the traceability of the clinical history, with entry stamp in the ICS no. (...)/(...)/2022, corresponding to the period between March 2006 and March 2022.
- 1.3. An office dated (...)/(...)/2022 from the ICS (with exit registration dated (...)/(...)/2022), accompanied by the medical history of the claimant, composed of 19 sheets corresponding to the time period between 06/01/2006 and 03/31/2022.
- 1.4. A second office dated (...)/(...)/2022 from the ICS (with exit registration dated (...)/(...)/2022), accompanied by a table on traceability of the claimant's medical history , corresponding to the period between 03/01/2020 and 03/18/2022.

In the letter of claim, the claimant complained that, in his opinion, he had only been given a summary of the medical history, and that the information provided was incorrect, without however specifying the reasons for this inaccuracy.

2. This Authority has processed another procedure for the protection of the right of access, with reference PT 129/2021, following a claim presented by the same person claiming against the ICS for disregarding the right of access to their clinical history and traceability of this.

The aforementioned procedure (PT 129/2021) had as its object other requests for access referred to a period of time included within the period to which the present guardianship procedure refers (in PT 129/2021 the requests came referring to the data processed up to the date of their access request -15/08/2021-, and in PT 68/2022 the access requests referred to the period between the month of March of 2006 and the month of March 2022). In both procedures, he requested access to the same processed data, and the claimant has given the same reasons for disagreement with the documentation that has been given to him by the ICS; that with regard to the claim we are dealing with (PT 68/2021) it is the same documentation that the ICS gave you in the context of PT 129/2021.

That is why in the present guardianship procedure it should be highlighted as a relevant background, that in rights guardianship procedure no. PT 129/2021, and specifically in the context of the enforcement incident, in which the Authority issued a 2nd Resolution dated 12/16/2022 in which the ICS was required to deliver the claimant certain documentation and report it on several points, the ICS has provided on 01/25/2023 before the Authority a copy of the letter dated 12/30/2022 and the attached documentation that it sent to the claimant (ICS exit record dated (...)/(...)/2023), from which the following is apparent:

- 2.1. The ICS has given the claimant a copy of the medical report issued on 21/03/2022 by a family doctor from the EAP (...) (everything indicates that the correct date of the medical report controversial is this, and not the date 21/03/2021 initially indicated, regarding which the ICS has stated that there is no record of the issuance of any medical report on that date).
- 2.2. The ICS has expressly informed the claimant that he does not have the reports, evidence, and other documentation mentioned in the medical history documentation that was given to him (*"We do not have any more information regarding your medical history , as well as other reports, evidence or related documentation that has not previously been delivered to you"*).
- 2.3. The ICS has expressly informed the person claiming that he does not have the medical documentation corresponding to the process followed at the Hospital (...), as well as the reason that would justify such a circumstance (*"The documentation that is generated in unmanaged centers by the Catalan Institute of Health is not automatically published in the clinical records. For this reason we do not have the medical documentation corresponding to the process followed at the Hospital (...), since the mentioned center does not belong to the network of centers managed by the Catalan Health Institute"*).

Fundamentals of Law

1. The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of Catalan Data Protection Authority.
2. Article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (in hereinafter, the RGPD), regarding the right of access of the interested person, provides that:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;*

- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;
 - e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;
 - f) the right to present a claim before a control authority;
 - g) when the personal data has not been obtained from the interested party, any available information about its origin;
 - h) the existence of automated decisions, 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. (...)
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, article 12.3 of the RGPD establishes 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 (...)"

For its part, article 13.3 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD), determines the following in relation to the right of access :

"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 to do so it."

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. As explained, the Authority has given its opinion in the procedure for the protection of the right of access no. PT 129/2021 on the same reasons for non-conformity that the claimant has put forward in the claim dated 06/14/2022 which is the cause of the present procedure, referring to the documentation that the ICS has given him for the purpose to satisfy the aforementioned right.

In the present procedure it must be made clear that the alleged neglect of the right of access (to the medical history and its traceability) that the claimant exercised through the request dated 08/15/2021 is not addressed and that was the subject of rights protection procedure no. PT 129/2021, but the alleged neglect of the right of access that he exercised through two requests submitted in 2022, to the clinical history and its traceability corresponding to the period between March 2006 and of March 2022. This is why the claim presented on 06/14/2022 before the GAIP and that this entity forwarded to the Authority, has given rise to a new rights protection procedure (PT 68/2022) .

Now, as has been advanced in the background section, the coincidence between both procedures (PT 129/2021 and PT 68/2022) comes from the fact that, in order to respond to these requests of access presented by the claimant in the years 2021 and 2022, the ICS has given the claimant the same documentation, and the claimant has complained in the same terms.

For this reason, the same legal considerations issued in the resolutions issued in procedure no. PT 129/2021.

The following will analyze, firstly, the complaint referring to traceability (3.1), and secondly, the one referring to the content of the clinical history (3.2).

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

First of all, it should be noted that the Department of Health uses the term *traceability* of the clinical history, to refer to the information relating to the people of an organization who have accessed the clinical history of a patient, and that would include the identity of the people who accessed it, and their position and/or category, as well as the circumstances in which each access took place, such as the date and time of access, and the center and the module or the drive from which it was accessed.

This term does not coincide with the material content of the right of access regulated in article 15 of the RGPD, the neglect of which constitutes the object of the present guardianship procedure. Specifically, of all the information corresponding to the traceability of access to the clinical history that has been mentioned, the only one that must be provided when exercising the right of access in Article 15 of the RGPD is the relative to the recipients or categories of recipients to whom, if applicable, the clinical information would have been provided, because only in these cases can it be understood that there is a communication of data, which is the term used in article 15.1.c) of the RGPD as information that must be provided: *"recipients or categories of recipients to whom personal data has been or will be communicated, in particular recipients in third countries and international organizations"*. Therefore, the only information the ICS should provide to the claimant is the identity of the entities or individuals outside the organization to whom, if any, the clinical data was disclosed. Therefore, in the opposite sense, it can be affirmed that the identity of the staff

assigned to the data controller (in this case, the ICS) who has accessed the the clinical history.

On the other hand, the health regulations also do not recognize the patient's right to know the identity of the professionals who have accessed their clinical history.

With regard to the documentation that the ICS has given to the claimant regarding the traceability of his medical history, in the letter of claim dated 06/14/2022, the claimant did not specify the reasons for disagreement . However, within the framework of guardianship procedure no. PT 129/2021, on 05/24/2022 the person claiming here submitted a letter to the Authority, through which he pointed out, for what is now of interest, the following about the same documentation that is being discussed here: *" traceability my clinical history does not provide the numbers or surnames of the people who made the entries."*

As a result of this reason for complaint made in relation to the documentation provided by the ICS in compliance with the resolution issued in procedure no. PT 129/2021, the Authority processed an enforcement incident, in the framework of which the ICS presented additional information to that initially given to the claimant. Specifically, he provided the table on traceability, which this time included the first and last names of the professionals who had, in each case, accessed the claimant's clinical history during the time period between 01 / 03/2020 and 18/03/2022 ; period covering what is the subject of this claim, as well as a screenshot with information aimed at certifying the delivery on 05/05/2022 of this documentation to the claimant.

In the framework of that enforcement incident, the Authority issued the Resolution dated 09/29/2022, in which the following was noted in legal basis 2.1:

"The claimant complains about the fact that in the documentation sent by the ICS regarding the traceability of his medical history, the name and surnames of the people who accessed it during the indicated period of time were not included.

For its part, as explained in the background (8th), the ICS has ended up giving the claimant a table with the names and surnames of the professionals who would have made the accesses listed in this table, from different centers belonging to the ICS.

However, it is important to point out that in legal basis 4.2 of the Resolution that is the subject of the enforcement incident, it was already pointed out that this information is not part of the right of access provided for in article 15 of the Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD). Specifically, the following was noted:

"(...) of all the information corresponding to the traceability of access to the clinical history, the only one that must be provided when the right of access is exercised in Article 15 of the RGPD, is that relating to recipients or categories of recipients to whom the clinical information would have been provided, that is, the identification of the entities or persons outside the organization to whom the clinical data was communicated. Therefore, in the opposite sense, it can be affirmed that the identity of the staff attached to the person in charge of

the treatment (in this case, the ICS) who has accessed is not part of the right of access in Article 15 of the RGPD in the clinical history."

This does not contradict what was also pointed out in legal basis 4.1 of the same Resolution, regarding the fact that the identifying information of the doctor "responsible for the sick" (that is, the family doctor assigned to the claimant) and of the other professionals who have assisted the claimant as a patient, for the reasons indicated in that Resolution. The Authority has found that this information (first and last name of these professionals) appears in the documentation that the ICS gave to the claimant on 05/05/2022 (21 sheets)."

According to the criteria set out, which is followed here as it could not be otherwise, it is necessary to dismiss this first reason for complaint formulated by the person claiming regarding the information on traceability to which he requests access - relating to the period between the month of March 2006 and the month of March 2022-, given that the ICS has certified that it was delivered to the person making the claim on 05/05/2022, before their claim was entered in the APDCAT, the information on traceability that it has, corresponding to in the period between 01/03/2020 and 18/03/2022 . This, taking into account that it is not part of the content of the right of access in Article 15 of the RGPD to provide the identity of the staff assigned to the data controller (in this case, the ICS) who has accessed the history clinic

3.2.- On the complaint related to the content of the clinical history delivered .

With regard to this second issue, the claimant has limited himself to showing his disagreement with the documentation that the ICS has given him, arguing that it is a summary, but without specifying which documents he considers to be the ICS would have omitted in the documentation delivered.

As noted, in the framework of guardianship procedure no. PT 129/2021 the claimant expressed the same complaint when the ICS handed him this same documentation, in order to comply with the Authority's Resolution dated 04/26/2022.

Well, following the complaint made by the person claiming about the content of the documentation delivered by the ICS, the Authority opened an enforcement incident within the framework of which two resolutions were issued, dated 09/29/ 2022 and 16/12/2022, respectively. In these resolutions, and in summary, it was concluded that the ICS had not proven to have given the claimant all the medical documentation that was cited in the documentation that had been given to him (in any case, a medical report dated 21 /03/2022 issued by a family doctor from the EAP (...), at the request of the claimant herself), nor, in his case, had he proven to have communicated to the claimant that he had no other documentation different from that delivered (and singularly, that he did not have the medical documentation corresponding to the care that the claimant received at the Hospital (...), dependent on (...)).

As explained in the 2nd precedent, in the framework of the incident of the execution of the procedure for the protection of rights no. PT 129/2021, on 01/25/2023 the ICS has submitted to the Authority a copy of the letter dated 12/30/2022 and the attached documentation that it sent to the claimant (departure register the ICS dated 01/23/2023), in order to comply with

the requirement made in the 2nd Resolution dated 12/16/2022 of the enforcement incident, referring to the provision of documentation and the aforementioned information.

From the reading of the documentation provided, it appears that the ICS has therefore given the claimant a copy of the medical report issued on 03/21/2022; that he has expressly informed the claimant that he does not have the reports, evidence, and other documentation mentioned in the medical history documentation that was given to him; and that he also does not have the medical documentation corresponding to the process followed at the Hospital (...), as well as the reason that would justify such a circumstance.

From the above it is concluded that the ICS has proven to have given the claimant the documentation and information regarding his medical history that he has, including that which he would not have provided with the documentation initially provided, regarding which the claimant formulated the claim that has given rise to the present guardianship procedure. Therefore, to the extent that this documentation has been provided to him, it must be concluded that the ICS has, in terms of substance, taken care of the claimant's right of access in the terms of his request which is the subject of this procedure .

However, given that it was not until a date close to 01/23/2023 that the ICS fully satisfied the claimant's right of access - and that it therefore did so after the beginning of 'this claim procedure', the claim must be partially accepted, without, however, being necessary to make any request to the ICS, given that the claimed entity has proven that it has delivered the documentation and information that it would not have provided initially in response to your request.

For all this, I resolve:

1. Partially estimate the guardianship claim made by (...) against the Catalan Institute of Health, regarding the request for access to his clinical history, without it being necessary to make any request, given that in the framework of the rights protection procedure no. PT 129/2021 the ICS has certified that it has satisfied the right of access exercised by the claimant in the present procedure.
2. Notify this resolution to the Catalan Health Institute and the person making the claim.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), 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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