

File identification

Resolution of the rights protection procedure no. PT 70/2022, urged against the Horta Guinardó Mental Health Association .

Background

1. On 06/29/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the claimant), for which he made a claim for the alleged neglect of the right to rectify his medical history that he had previously exercised before the Horta Guinardó Mental Health Association - which manages the Center of Adult Mental Health of which the claimant here had been a patient/user (hereafter, ASM). The person claiming claims that ASM had not responded to his request within the period established by the regulations.

The claimant, to prove the exercise of his right before the claimed entity, provided the copy of the email he sent on 05/25/2022 to the address (...).com, in which he exercised his right of rectification. As documentation attached to this email, for what is of interest here, it is recorded that he sent the following to ASM:

A) Letter addressed to ASM, in which he requests the rectification of his medical history in the terms indicated below and for the reasons stated:

A.1) In relation to the assistance 2018CH(...) dated 02/23/2018, in which the psychologist Ms. (...) includes the following annotation:

(...)

The person making the claim, regarding this entry, states that: "(...)"

In accordance with the above, the claimant here requests that the entry of 02/23/2018 be completed in his medical history with the following paragraph:

"(...)
"

A.2) In relation to the assistance 2018CH(...) dated 06/05/2018, in which the psychologist Mrs. (...) includes the following annotation:

(...)

The person making the claim, regarding this entry, states that: "(...)"

In accordance with the above, the claimant here requests that the entry of 06/05/2018 be completed in his medical history with the following paragraph:

"(...)
"

B) Recording of the session that, according to the claimant, he had with the psychologist Mrs. (...) on 02/23/2018 in which it mentions the claimant's perception of having suffered "a

trauma" (the claimant here refers to this recording when in his request before ASM alludes to "document 3")

C) Recording of the session that, according to the claimant, he had with the psychologist Mrs. (...) on 06/05/2018, in which the claimant here mentions *that he "had plans of suicide"* (the claimant here refers to this recording when in his application before ASM he alludes in "document 4")

On the other hand, attached to his letter of complaint before this Authority, the person making the claim provides an annex in which he relates, as he states, "*a series of points that I consider false in my medical history, but which have decided not to add to the rectification letter. (...)*".

2. On 07/04/2022, the claim was transferred to ASM so that within 15 days it could formulate the allegations it deemed relevant.

3. On 07/18/2022, ASM made allegations in the following terms:

- That following the transfer of the claim made by Mr. (...) by the Authority, the reason why ASM had not responded to his request for rectification was analyzed. As a result of this analysis, it was detected that the lack of response was due to a computer error in the management of the mail (...) @.com.
- That on 07/09/2022 the response letter to your request was sent by email.

The entity, together with its statement of allegations, provided a copy of the letter it had sent to the claimant on 07/09/2022, in which it set out the following:

"(...)

In your case, having examined the documentation that you present to us and made the relevant consultation with the professionals who have the medical criteria to decide on the case, we inform you that it is not possible to grant you the requested right. (underlining is from the Authority)

The personal data that appear in the medical history guarantee adequate assistance to the patient and allow the care professionals of the center to make the diagnosis or prescribe the most appropriate treatment in each case. Having examined the documentation presented in your request, this Entity considers that the rectification of the personal data claimed is not necessary, given that it does not appear from the documentation presented that these data are incorrect, inaccurate or inadequate with respect to the purposes for which are treated. And as has already been reasoned, these data are in accordance with what according to the law must be included in the clinical course, so the exercise of this right has no place here. In the clinical history, the notes are a summary of the topics discussed, not a literal transcription of the conversation held with the patient. Likewise, these notes are collected in the clinical course under the name and responsibility of the professional who makes them. Therefore, it would not be appropriate to modify or add to the notes of the professionals a series of information that they have not made. By virtue of the above, it is decided to deny the request for rectification of personal data for the reasons stated above".

4. On 07/27/2022, the Authority received a letter from the claimant setting out the reasons why he did not agree with the response provided by ASM rejecting his request for

rectification. In the same letter he also denounced ASM for, among others, not having attended to his right of rectification within the period provided for in the regulations, a complaint following which the preliminary information no. IP 424/2022.

5. On 07/29/2022, this second letter (and attached documentation) of the person making the claim was transferred to ASM, so that within 15 days he could formulate the allegations he considered relevant.

On the date on which this resolution is issued, ASM has not made any further allegations other than those it presented in a letter dated 07/18/2022 (3rd precedent).

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. First of all, and before analyzing the facts that form the basis of the claim, it is appropriate to respond to the statements made by the claimant in his writing, explaining that the claim included "a series of points *that I consider false from my medical history, but which it has been decided not to add to the letter of correction (...)*"

In this regard, it should be noted that this resolution will only analyze the rectifications previously requested from ASM, and this because the protection regulations require it. Indeed, as determined by article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, before filing a claim for the protection of rights, it is required to prove that the right has been exercised before the person responsible of the file or treatment, with the requirements indicated in article 25.1 of Royal Decree 1720/2007, of December 21, which approves the Regulations for the deployment of the LOPD.

3. Having established the above, it is necessary to relate the applicable regulatory framework in the case analyzed here.

Article 16 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 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, LOPDGD), 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 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 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. (...)"

In relation to the above, article 16.1 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, 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."

4. Having explained the applicable regulatory framework, it is then necessary to analyze whether ASM resolved and notified, within the period provided for by the applicable regulations, the right of rectification exercised by the person making the claim, since it was precisely the reason for his complaint that initiated the present procedure of rights protection, was the fact of not having obtained a response within the period provided for the purpose.

In this respect, it is certified that on 05/25/2022 a letter from the claimant was received by the entity through which he exercised the right to rectify his personal data.

In accordance with article 12.3 of the RGPD, ASM 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, ASM has not proven to have responded to the request for rectification made by the person making the claim, within the one-month period provided for that purpose. Consequently, since the claim was based on the lack of response to the request to exercise the right of rectification, it must be declared that ASM did not resolve and notify in form and time the said request presented by the person affected. However, ASM has acknowledged having responded to the rectification request extemporaneously, specifically, on 07/09/2022. This notwithstanding what will be said below regarding the substance of the claim.

5. 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 the rectification of the data in the terms requested by the claimant and which are detailed in the 1st precedent (letter A).

As a starting point, it should be borne in mind that article 16 of the RGPD regulates the right of rectification as the right of the affected person to have inaccurate or incomplete data modified, thus complying with the principle of accuracy regulated in article 5.1.d) of the RGPD.

The right to rectification 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 rectification 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 to rectification are found in article 23 of the RGPD, which must be provided for *"through measures legislative "* (art. 23.1 RGPD) .

To the extent that the requested rectification refers to certain annotations contained in the claimant's medical history, it is of interest to cite here the health regulations, specifically, article 14 of State Law 41/ 2002, of November 14, basic regulation of patient autonomy and rights and obligations in the field of information and clinical documentation, which determines:

"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.

As progressed, the claimant here requested ASM to complete his medical history by adding certain paragraphs (written by himself) to the notes he made on 02/23/2018 and 06/05/2018 the professional who treated him. To this end, the person making the claim provides what he claims is the recording of the two visits he had with the referred professional, in which the issues for which incorporation was requested were discussed (sections B and C of the 1st precedent).

This Authority has already had the opportunity to pronounce itself (rights protection procedures no. PT 2/2020 and PT 49/2020), in the sense that due to the fact that they are not included in the files (in this case, history clinic) all the data that the professionals have been able to access, it cannot be inferred that the information contained there is necessarily incomplete if it is sufficient for the purposes for which it has been collected. In this respect, article 16 of the RPGD is very clear when it states that the interested person will have the right to have their data completed, as long as this addition is appropriate to the purposes of the treatment.

It should also be added that the fact that the professionals only include in the clinical history that information they consider relevant for the purposes, would result in an action in accordance with the principle of data minimization, enshrined in article 5.1.c) of the 'RGPD. Thus, in order to comply with this principle, professionals must not incorporate all the information they have, nor that which the patients would like to include, but only that which from a professional point of view is considered relevant and proportionate in relation to the purpose of the treatment.

In relation to the above, and in the case that is analyzed here, the medical or professional criterion is completely relevant (in this sense, the Judgment of the National Court of 27/11/2020 -rec 1912/2019-), so that the medical history must incorporate only that information that the professional considers relevant to give adequate care to the patient. Well, regarding this, ASM has informed that, having transferred the request of the claimant here to the professional who treated him and who made the notes which rectification is requested, the rectifications of his clinical history are not proceeding, and it refers to the reasons that were already presented to the person claiming in response to their request for rectification.

In view of the considerations presented by ASM, and the content of the recordings provided by the claimant here (which, according to him, would contain part of the sessions he would have held with the aforementioned professional), this Authority does not have elements sufficient to question the medical-professional criterion on the basis of which it has been concluded that the rectification of data requested by the claimant here is not appropriate in the terms that have been collected in the antecedents.

That being the case, this Authority considers that, from the perspective of the right of rectification regulated in the RGPD, it is not appropriate to consider the present claim for the protection of the right of rectification.

For all this, I resolve:

1. Declare the response given by the Association of Mentally Ill Horta- Guinardó to the request for rectification made by Mr. (...) to be extemporaneous for not having done so within the period established in the applicable regulations; and, dismiss it when the substance is in accordance with what is stated in the 5th legal basis.
2. Notify this resolution to the Association of Mentally Ill Horta- Guinardó 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,