

File identification

Resolution of the rights protection procedure no. PT 77/2022, urged against the Department of Health (General Directorate of Medical Assessments) .

Background

1. On 07/26/2022 , the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the General Sub-Directorate of Medical Assessments (SGAM) - formerly the Catalan Institute of Medical and Health Assessments (ICAM), which is attached to the General Directorate of Health Planning and Regulation of the Department of Health (hereinafter, Department of Health) .

Specifically, the complainant complained about the lack of response to two requests to exercise the right of access that he had submitted to the Department of Health, one on 06/16/2022, and another on 22 /06/2022.

In this regard, it should be noted that, among the various documentation provided by the person making the claim, there was also the one relating to a third request dated 10/06/2022 addressed to the Department of Health, but to which the person making the claim did not refer to in the claim presented to this Authority.

The documentation provided by the claimant is as follows:

- Copy of the access request of 10/06/2022 addressed to the Department of Health, in which the interested person requested a copy of the reports of “ *Dr. (...) and of the public employee Mrs. (...)* ” of 05/16/2022 and 05/31/2022, respectively. The request also states that the requested documentation was delivered on the same day 10/06/2022 to the person making the claim, who justifies its receipt by signing the "Proof of receipt" space, included in the same request.
- Copy of the access request dated 06/16/2022, submitted to the Department of Health, in which the interested person requests again the report “ *issued by the public employee of the ICAM, Ms. (...)* ”, dated 05/31/2022.
- Copy of the access request dated 06/22/2022, presented to Matadepera City Council, where the interested person requests a copy of the recordings of 05/31/2022 of the video surveillance cameras installed in the dependencies of the SGAM and, specifically:
 - The images recorded by the reception security camera between 9.00 and 9.35h.
 - The images recorded by the reception security camera between 12.45 and 1.15pm.
 - The images recorded by the reception camera on the 3rd floor between 12:30 and 1:00 p.m.

2. On 07/30/2022, the claimant sends an email through the public service mailbox of this Authority, with which he attaches a copy of the resolution, dated 07/28/2022, by the which the Secretary General of the Department of Health rejects the request for access, dated 22/06/2022, to the images of the video surveillance cameras installed at the SGAM.

In this resolution, in summary, the following was indicated:

- That on 06/28/2022 *"the Department of Health received from the Matadepera City Council a letter dated 06/22/2022"* from the person claiming, through which he requested a copy of the recordings of the video surveillance cameras installed in the offices of the SGAM.
- That *" the Department of Health is responsible for the treatment of personal data collected in the video surveillance cameras installed in the SGAM offices in Barcelona"*.
- That *" the treatment of personal data through cameras for the purpose of video surveillance installed in the accesses and common spaces of the SGAM of the Department of Health is regulated in the document dated 07/12/2012 called "Memory art. 10 Instruction 1/2009, of February 10, on the processing of personal data using cameras for video surveillance purposes" ("video surveillance file") of the Department of Health of the Generalitat of Catalonia."*
- That *" with regard to the processing of personal data for the purpose of video surveillance, reference must be made to Instruction 1/2009, of February 10, of the Catalan Data Protection Authority (DOGC no. 5322, of 02/19/2009) ", and, in relation to this, cites articles 8 (conservation of images), 10 (prevision of the existence of a memory prior to the creation of a file), 13 (the exercise of the right of access), and 17 (referring to the exercise of rights).*
- That in the Report on the video surveillance file of the Department of Health, dated 07/12/2012, *" which regulates the treatment of video surveillance images in the SGAM facilities "*, in its section 8 provides the following:

"8. PERIOD FOR WHICH THE SYSTEM IS INSTALLED AND THE PERIOD OF CONSERVATION OF THE IMAGES.

*The video surveillance camera system is installed for an indefinite period. Images will remain stored on your system hard drive until it is full and will automatically delete older images to replace them with newer ones. The storage time varies depending on the number of cameras installed and their resolution, taking into account that while no movement is detected the recording units do not record images, estimated for **this installation in approximately 15 days ."***

- That *" If you take into account that in the Report on the video surveillance file of the Department of Health, section 8, it is established **that the conservation period of the images is 15 days** and that the recordings that are requested are dated 31/05/2022, it must be concluded that on the date the request for access came to SGAM's attention, **the recordings that could have contained the images of Mr. (...) had already been deleted.**" reason for which the request of the interested person was dismissed."*

3. On 07/31/2022, the Authority received a new letter from the claimant, with which he attached, among other documents, a copy of another request dated 06/16/2022, addressed to the Department of Health, in which he asks to obtain a copy of the recording of the video surveillance camera located at the reception of the SGAM offices, corresponding to the time slot of 12:30 a.m. to 1:00 p.m. on 31/05/2022 .

4. On 08/03/2022, the claimant submits a new letter, where he complains that the resolution of the Department of Health dated 06/28/2022 denying access to the copy of the video surveillance camera recordings, s has ruled out of time (" *that the 30 days have passed in resolving the petition* "). In this regard, the claimant refers to the request for access to the images recorded by the video surveillance camera of the SGAM reception, dated 06/16/2022.

The claimant provides various documentation, which he had already attached with previous writings.

5. On 26/10/2022, the claim was transferred to the Department of Health so that within 15 days it could formulate the allegations it deemed relevant.

6. The Department of Health made allegations in a letter dated 11/11/2022, in which it basically set out the following:

- That "*The claimant was summoned to the ICAM on 31 May 2022 in connection with a record of fitness to drive motor vehicles. After the recognition by an evaluating doctor specializing in psychiatry and by the head of service, the corresponding opinions were issued and the result was communicated to the Provincial Prefecture of Traffic of Barcelona.*"
- That in relation to the access request dated 06/16/2022, for which he requests a copy of the report issued by the SGAM on 05/31/2022, "*we know that he submitted it at the Matadepera City Council and was entered in the ICAM register on June 16, 2022, but given that on June 10, 2022 (entry register (...)) a written where Mr. (...) asks for the reports issued by Dra. (...) and by Dr. (...), they were delivered to him the same day in person. His signature is recorded, justifying the receipt of the requested reports.*"
- That "*Regarding the request made in order to obtain a copy of the images captured by the different security cameras of the Puigmal Building in Barcelona, it is reported that Mr. (...) has presented different and repeated requests both by e-mail addressed to different ICAM corporate mailboxes, and by ordinary mail, presenting documents in the ICAM registry, also to the Minister of Health and also to through the Registry of the Matadepera Town Hall, among others .*"
- That the resolution of the secretary general of the Department of Health, dated 07/28/2022 through which she dismissed the right of access to the images of the video surveillance cameras , "*was notified electronically and made available on the 28 of July 2022 and accepted on July 30 , 2022. "*

The Department of Health provided various documentation in order to certify the delivery of the documentation requested by the person claiming here, and specifically, a copy of the evidence of the provision on 07/28/2022 of the notification electronic resolution of the rejection of the right of access to the recordings of the video surveillance cameras, which was accepted by the claimant on 07/30/2022.

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 person in charge of the treatment confirmation of whether or not personal data that concern them are being processed and, in such case, the right to access personal data and the following information:

a) the purposes of the treatment;

b) the categories of personal data in question;

c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;

d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;

e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;

f) the right to present a claim before a control authority;

g) when the personal data has not been obtained from the interested party, any available information about its origin;

h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."

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

"3. The person 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.
(...)"*

For its part, article 13 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right to access:

"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.

When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information, that the affected person specifies the data or the processing activities to which the request refers.

2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.

However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.

3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it

4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."

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 different rights of access exercised by the person making the claim, since precisely the reason for their complaints, which initiated the present procedure for the protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

In accordance with article 12.3 of the RGPD, the Department of Health had to resolve and notify each of the requests to exercise the right requested, within a maximum period of one month from the date of receipt of each request.

Specifically, the claims submitted by the claimant refer to the following requests:

- the request dated 06/16/2022 in which he requested a copy of the report issued by "Mrs. (...)" dated 05/31/2022;
- the request dated 16/06/2022 in which he requests a copy of the recordings of the video surveillance camera located at the reception of the SGAM offices, corresponding to the time slot of 12:30 a.m. to 1:00 p.m. of the day 31/05/2022;
- the request dated 06/22/2022, in which he requests a copy of different recordings from the video surveillance cameras located in the SGAM premises on 05/31/2022 (between 9.00 and 9.35 a.m.), (between 12.45pm and 1.15pm) and (between 12.30pm and 1pm).

On the other hand, it should be noted that, among the documentation submitted by the claimant, there is also the request dated 06/10/2022, where the claimant requested a copy of the reports issued by Dr. (...) and Ms. (...), and that it is recorded that the Department of Health attended in person on the same day of its reception. This request, however, does not form part of any of the claims made by the claimant before this Authority.

Having said that, it is necessary to enter into the analysis of whether the Department of Health responded in time to each of the 3 requests presented:

3.1.- Regarding the request for access to the report dated 05/31/2022 issued by "Ms. (...)", which was entered in the SGAM on 06/16/2022.

In this case, the Department of Health has not proven to have responded to the request for access made by the person making the claim, neither within the period of one month (extendable for two more months) provided for that purpose, nor later

In this regard, the Department of Health states that this request had already been satisfied days before, when on the occasion of the access request dated 06/10/2022, the entity had already delivered the requested reports to the person claiming. In this sense, it should be noted that, regardless of whether the request dated 06/16/2022 was a reiteration of the request dated 06/10/2022, which had already been satisfied, this circumstance did not exempt the responsible for the treatment of the obligation to inform the interested party of the reasons why the entity would have considered not to proceed with their request dated 06/16/2022 (art. 12.4 RGPD).

Therefore, it is considered that the request dated 16/06/2022 for access to a certain report did not receive any response from the Department of Health.

3.2.- Regarding the request for access to the recordings of the video surveillance camera located at the reception of the SGAM on 05/31/2022, which was received by the SGAM on 16 /06/2022.

In this case, it should be indicated that the recordings that the claimant requests access with the request dated 16/06/2022, are also the subject of the access request that the claimant submits days later, on 06/22/2022, in front of Matadepera Town Hall, and in which he also requests access to other recordings.

Having said that, it should be noted that it is certified that the request dated 22/06/2022 was resolved by the resolution of the secretary general of the Department of Health, dated 28/07/2022, by which access was rejected to all the recordings that the claimant had referred to in said access request, including the recordings that had previously been the subject of the request dated 06/16/2022 and that were returned to be requested with the application dated 06/22/2022.

The way things are, the Department of Health has certified that it gave an answer to the request dated 16/06/2022, through the resolution dated 28/07/2022, however, this resolution was issued once it had already been passed the period of one month established for the purpose (art. 12.3 RGPD).

3.3.- Regarding the request for access to a series of recordings captured by the video surveillance cameras, located at receptions on different floors of the SGAM, during the day 31/05/2022, which was presented on 06/22/2022 before the Matadepera Town Council.

Well, this last request - which, unlike the one on 16/06/2022, not only requested access to different recordings recorded by the SGAM reception security camera, but also, to the images recorded by the security camera located at the reception of the 3rd floor of the SGAM-, as indicated, obtained a response through the referenced resolution dated 07/28/2022, which rejected access to the recordings requested.

At this point, it should be noted that in said resolution it is recorded that the request of 06/22/2022, presented to the Matadepera City Council, was not received by the Department

of Health until the 28 /06/2022. So things are, in this case, it is necessary to take into account, what is provided for in article 41.7 of Law 26/2010, which establishes that the beginning of the calculation is determined by the date on which it was entered in the register of the competent body for processing the procedure. This fact allows us to understand that the resolution of said request was issued and notified within the deadline, since the entity made it available to the person making the claim on 07/28/2022, from which time, in accordance with the provisions of article 40.4 of Law 39/2015, the notification must be considered completed for the purposes of considering it notified within the deadline.

In accordance with the above, and taking into account that the request dated 22/06/2022 was received by the SGAM on 28/06/2022, it must be considered that in this case, the Department of Health , resolved and notified the resolution dated 07/28/2022, by which it responded to the request dated 06/22/2022, within the legally provided deadline.

4. Once the above has been established, it is necessary to analyze the merits of the various claims, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in the different cases access to the data in the terms that the request of the person making the claim.

As a starting point, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case , access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD In addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data for which access has been requested.

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

In accordance with this, the right of access to personal data recognized in article 15 of the RGPD implies that the person making the claim here would have the right to access, in any case, the information that could be contained in the report that requested where their personal data appeared, such as in the recordings captured by the video surveillance cameras of the SGAM where the person claiming appeared. This, notwithstanding that any of the limitations provided for in article 23 of the RGPD may apply.

4. 1.- Regarding the request for access to the report dated 05/31/2022 issued by “ Mrs. (...) ”, which was entered in the SGAM on 06/16/2022.

As already explained in the previous legal basis, the Department of Health did not respond to this request, arguing in the hearing procedure that the documentation requested by the claimant was a reiteration of the documentation that was already provided in person on 06/10/2022, following another request submitted by the claimant on 06/10/2022.

In this regard, it should be noted that the data protection regulations provide for the possibility that the data controller may decide not to proceed with a request for the exercise of rights, in the event that this is excessive due to its nature repetitive (art. 12.5.b) RGPD and art. 13.3 LOPDGD). However, even in this case, the person responsible for the treatment is obliged to give an answer to the applicant, as provided for in article 12.4 of the RGPD: "*If the person responsible for the treatment does not comply with the request of the interested party, will inform him without further delay, and no later than one month after receiving the request, of the reasons for his non-action (...)*"

That being the case, the interested person has the right to receive a response from the person in charge of the treatment to their request for the right of access, without prejudice to the fact that in this response the entity may indicate that it will not proceed with the request request, citing the fact that it is repetitive, and that the information you are requesting has already been provided to you as part of a previous access request (10/06/2022).

4.2.- Regarding the request for access to the recordings of the video surveillance cameras (16/06/2022 and 22/06/2022).

In relation to the exercise of the right of access regarding the images captured by the video surveillance cameras of the SGAM premises on 05/31/2022, it is stated that the person claiming submitted two requests, one on 06/16/2022, and the other on 06/22/2022.

Well, from the documentation presented by both parties, it is proven that both requests were answered through the resolution issued by the Department of Health on 07/28/2022, by which it rejected access to the said recordings. In this sense, the resolution of 07/28/2022 motivated the rejection, based on the argument that the entity did not have the requested recordings, given that the period of conservation of these, established in the "*Memory of the video surveillance file of the Department*", is 15 days. Therefore, taking into account that the recordings that were requested were from 31/05/2022, on the date that the two applications are presented (16/06/2022 and 22/06/2022), the recordings which may have contained images of the claimant had already been deleted.

In this regard, it should be noted that Instruction 1/2009, of February 10, 2009, of the Catalan Data Protection Authority, on the processing of personal data through cameras for video surveillance purposes, states 17th, that in the event that the images have been deleted at the time the right is exercised, the resolution of the data controller may be limited to exposing this circumstance and reporting the material impossibility of satisfying the right exercised, as and as it is recorded that the Department of Health did, reflecting this circumstance in the resolution of 07/28/2022.

Well, starting from this information, and taking into account that the necessary premise to be able to exercise a right of access is that the personal data to which it is intended to be accessed are in the possession of the data controller, it is considered compliant to the right to data protection the response that the Department, through the resolution dated 07/28/2022, gave to the claimant here rejecting access to the requested data, since it could not grant access to an information that he did not have as a data controller.

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 claimed entity so that, within 10 counting days from the day after the notification of this resolution, it certifies that it has given an answer to the request for the right to access to the report dated 31/05/2022, submitted by the person claiming on 16/06/2022, in accordance with data protection regulations.

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

For all this, I resolve:

1. In relation to the request to exercise the right of access to a certain report (indicated in points 3.1 and 4.1 of the 3rd and 4th legal bases, respectively), made on 06/16/2022 by Mr. (...), against the Department of Health, estimate the guardianship claim for neglect of the request, by not having given him an answer.

In this regard, the Department of Health is required to implement the right of access exercised by the claimant within 10 days from the day after the notification of this resolution, in the manner indicated to the foundation of law 5th. Once the right has become effective, within the following 10 days the claimed entity must report to the Authority.

2. In relation to the request for access to the recordings of the video surveillance cameras made on 06/16/2022 by Mr. (...), declare the resolution dated 07/28/2022 issued by the Department of Health, by which it rejects the request for access to the recordings of the video surveillance cameras, to be extemporaneous, without making any other pronouncement nor any requirement regarding the substance of the claim, as the claimant's right has become effective, in accordance with what has been indicated in the legal basis 4rt.

3. In relation to the request for access to the recordings of the video surveillance cameras made on 22/06/2022 by Mr. (...), and which was received by the Department of Health on 06/28/2022, dismiss the guardianship claim made against the Department of Health, as the claimant's right has become effective within the deadline legally provided for.

4. Notify this resolution to the Department of Health and the person making the claim.

5. 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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