File identification

Resolution of the rights protection procedure no. PT 88/2022, urged against the Fundació Asistencianal de Mútua de Terrassa FPC (Hospital Universitari Mútua Terrassa).

Background

1. On 04/10/2022 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 delete his personal data that he had previously exercised before the Fundació Assistencial de Mútua de Terrassa, FPC (hereinafter, FAMT).

Specifically, the claimant pointed out that at the Mútua University Hospital of Terrassa, belonging to FAMT, there was a report dated (...) which records that the claimant here was admitted to that hospital, " *con unos diagnoscos completente incorrectos ",* and in relation to this, he stated that he can prove that he was not admitted to that hospital and that *"the diagnoses they put in the report are false"* .

The claimant only provided a copy of the response given to him by the FAMT, which is transcribed below:

"We respond to your letter dated (...)/22, through which you ask us to exercise the right to delete any personal data of yours that is being processed by the Mutual Assistance Foundation of Terrassa, FPC

We inform you that we cannot proceed with the deletion you request because, as a health center, we are legally obliged to keep the clinical documentation for a minimum period of time (art. 17 Law 41/2002 on Patient Autonomy and art. 12 Law 21/2000 on information rights concerning the health and autonomy of the patient and clinical documentation, in relation to the criteria on retention periods of the Technical Commission on Clinical Documentation of the Department of Health of the Generalitat of Catalonia).

The Spanish Data Protection Agency (AEPD) recognizes the patient's right to cancel their health data is not absolute or unlimited, because it is conditioned, among other circumstances, to the restrictions that can be established by a standard, for reasons of public interest in the field of public health, or when there is an obligation to retain the data.

(...) "

2. On 17/10/2022, the Authority asked the claimant to specify whether the medical care received by the FAMT, which would have generated the data with respect to which the claimant exercises his right of deletion, was as a public healthcare user, or, on the contrary, as a private patient (Mútua privada).

3. On the same day 17/10/2022, the claimant specified that in the controversial medical report " *the number of the health card appears"* and that " *it is assumed that I was admitted there in the public part* ".

4. On 11/17/2022, the claim was transferred to the claimed entity (FAMT) so that within 15 days it could formulate the allegations it deemed relevant.

5. On 12/20/2022, the claimed entity made allegations through a letter of the same date, in which it set out, in summary, the following:

- That on date (...)/2022, the claimant sent an email *"to the data protection representative (DPD) of FAMT, requesting the deletion of all his data from FAMT(...)"* , which was answered on (...)/2022 .

- That *"The request of Mr. (...) was based on his statement that, in a medical report from (...), issued by FAMT, there were completely erroneous and false diagnoses.".*

- That *"The DPD answered Mr. (...) within the legally established term in article 12.3 of the RGPD, informing Mr. (...) that we could not proceed with the deletion that, as a healthcare center, we are legally obliged to keep the clinical documentation for a minimum terms (art. 17 Law 41/2002 on Patient Autonomy and art. 12 Law 21/2000 on information rights concerning the patient's health and autonomy and clinical documentation, in relation to the criteria on terms of preservation and recommendations of the Technical Committee on Clinical Documentation of the Department of Health of the Generalitat de Catalunya ("CTMDC")* .

- That *"In the case of the specific report that Mr. (...) alleged to substantiate the deletion request, it was a* ***hospital discharge report dated (...)*** *, and in accordance with the CTMDC, it is recommended to keep it for a period of 15 years from the date of discharge of the healthcare process, and in any case, when the documentation is relevant for healthcare and judicial purposes (among others). Therefore, the DPD informed the patient that we could not attend to his deletion request of their clinical data".*

The claimed entity accompanied its letter with the following documentation:

- a copy of the email, dated (...)/2022, through which the claimant addressed the DPD of FAMT, ((...)), to set out:

  "(...) I asked the ICS for my clinical history, and what was my surprise that a report from this hospital of the year appeared (...) with my data with some diagnoses, completely wrong/false."

  In relation to this, he ends up requesting : *"I request the Supresión/Cancelación de todos los data que están a mi nombre ."*

- a copy of the email, dated (...)/2022, by which the DPD of FAMT, ((...)), responded to the claimant's request, with the terms already reproduced above of law 1st.

6. On 12/01/2023, the Authority asked the claimed entity to report on whether, apart from the response dated (...)/2022, the FAMT also provided any explanation referring to the statements of the person claiming about the alleged lack of accuracy of the data collected in the medical report of (...).

7. On 17/01/2023, the claimed entity responded to the request for information by means of a letter of the same date, in which it set out, in summary, the following:

- That in relation to the exercise of the right of deletion, *"FAMT's only response to Mr. (...) is the one dated (...)/22, which was provided, as Document nº 1, accompanying the statement of allegations of 12/20/22."* .

- That according to the provisions of article 17 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 of these (hereafter, the RGPD), *"(...) the right of deletion invoked by the interested party must be attended to by the person in charge of the treatment if the concurrence of one of the listed circumstances is verified in sections 1 and 2 of this article, which in no case has been alleged by the interested party.(...)"* . That article 17.3.b) of the RGPD *"(...) provides that it is not necessary to proceed with the requested deletion (despite one of the causes of the previous sections) in the case of the fulfillment of an obligation legal that requires the processing of the data. (...)* " And in this sense, *"(...) the justification alleged by FAMT for not attending to the exercise of the right of deletion was the legal obligation to preserve the clinical data for a minimum period of time, in accordance with the which is established in the legal regulations, state and autonomous, in the matter of information and clinical documentation (art. 17 Law 41/2002 on Patient Autonomy and art. 12 Law 21/2000 on information rights concerning health and patient autonomy and clinical documentation), and especially the recommendations of the Technical Commission on Clinical Documentation (15 years from the date of discharge of the healthcare process)."*

- That *"(...) despite his statement about the existence of errors/falsehoods, the interested party did not ask for the content of the report to be rectified, but for the total deletion of his personal data."* .

- That " *(...) FAMT reviewed the information contained in his medical history, in order to identify the report referred to in his email. The only report contained in his Mútua Terrassa medical record was a* ***hospital discharge report dated (...)*** *."*

- That *"(...) the medical professional who issued and signed the report does not currently work at FAMT, and given the time that has passed since medical assistance (almost 13 years), no other professional from the Service where she received care the patient remembered the case. (...)* ". That in the medical history of the claimant *"(...) there is no other information that allows identifying the existence of an error or falsehood in the content of this report. The patient has also not been assisted at Mútua Terrassa after these events, and therefore the content of the report could not be assessed with data on assistance after the issuance of this report. (...)* ".

- What *"(...) the interested party has never expressly requested the rectification of any specific data in this report, not even after receiving the negative response to his exercise of the right of deletion, but has directly filed a complaint before the Apdcat for an alleged breach of the protection of their rights. (...)* "

- That " *in section 2.3 of its "Data Protection Guide for patients and users of health services", (...).* It recognizes that *"in the healthcare field, the request to change or delete clinical care data requires that healthcare professionals analyze the circumstances of*

each case, always from a medical point of view, to assess whether this change may condition or harm the patient's healthcare . In addition, it recognizes that the law obliges to keep part of the information for 5 or 15 years, or even a longer term depending on the document in question, counting from the date of the care received (...) " .

From the total of the information gathered during the hearing procedure, it is inferred that there was a typing error when on the date of the controversial report indicated by the person claiming ((...)), since, according to the entity, the only medical report they have in the claimant's medical history is from (...), a date from which they no longer have any more information about the claimant.

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.

In this regard, it should be noted that the Mútua Terrassa University Hospital is part of the comprehensive health system for public use in Catalonia (SISCAT), by virtue of the formalization of assistance activity agreements with the Catalan Health Service (CatSalut) of the Generalitat, and therefore falls within the competence of the Authority by virtue of article 3 of Law 32/2010 .

2. Article 17 of the RGPD regulates the right to deletion in the following terms:

"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:
a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;
c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;
d) personal data have been treated unlawfully;
e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;
f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.
(…)
3. Sections 1 and 2 will not apply when the treatment is necessary:
a) to exercise the right to freedom of expression and information;
b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the

person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;
c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;
d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or
e) for the formulation, exercise or defense of claims.

Article 15 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), determines the following, also in relation to the right of deletion:

"1. The right of deletion will be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.
When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge will be able to retain the identification data of the affected person necessary in order to prevent future treatments for direct marketing purposes."

Article 32 of the LOPDGDD regulates the duty to block deleted data in the following terms:

"1. The person responsible for the treatment is obliged to block the data when carrying out the rectification or deletion.
2. The blocking of data consists of the identification and reservation of these, with the adoption of technical and organizational measures, to prevent their treatment, including display, except for making the data available to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the limitation period thereof.
After this period, the data must be destroyed.
3. Blocked data cannot be processed for any purpose other than that indicated in the previous section. (...)"

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.*
> (…)"

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 FAMT responded to the request for deletion made by the applicant, within the period provided for by the applicable regulations.

In this regard, it is certified that on (...)/2022 the claimant here sent an email to the FAMT by means of which he requested the deletion of all his personal data, stating that his medical history contained a report for the year (...) that contained incorrect data .

In accordance with article 12.3 of the RGPD, the FAMT had to give an answer to the request to exercise the requested right within a maximum period of one month from the date of receipt of the request legality

So good, as it turns out of the documentation provided as part of the hearing procedure of this guardianship procedure, it has been established that the FAMT responded to the claimant here by email - the same electronic means by which it had received the request from 'exercise of rights - on (...)/2022, that is to say, before the expiration of the one-month period provided for in article 12.3 of the RGPD.

Therefore, in the present case, the claimed entity formally gave an answer to the claimant within the legally prescribed period, all this without prejudice to what will be said below about whether or not the answer was completed.

4. Once the above has been settled, it is necessary to analyze the substance of the claim, that is, if in accordance with the precepts transcribed in the 2nd legal basis, the deletion of the data proceeds in the terms requested by the person making the claim .

Before entering into the analysis of the merits of the claim, it is necessary to indicate that the object of the claim formulated before this Authority was presented against the eventual denial of the exercise of the right of deletion in relation to a certain report medical which, according to the claimant, would contain incorrect diagnoses . However , the literal terms in which the claimant raised the exercise of the right of deletion in the email sent to the FAMT differ from what he set out in the claim submitted to this Authority.

The claimant in his request dated (...)/2022 sent to the FAMT, with express reference to the detection of a " *report from this hospital of the year (...)"* that contained " *completely wrong* " diagnoses */falsos "* , requested the deletion of " *todos los datos que están a mi nombre* ".

As a starting point, it should be borne in mind that the right to deletion is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data (Article 18.4 CE).

Article 17 of the RGPD defines the right to deletion as the right of the affected person to obtain from the data controller the deletion of the personal data affecting him if any of the circumstances provided for in article 17.1 of the 'RGPD, and as long as none of the exceptions noted in articles 17.3 and 23 of the RGPD apply.

Well, the claimed entity in its response to the claimant here informed, among other things, about the impossibility of deleting personal data based on the fulfillment of a legal obligation (art. 17.3. b RGPD), and in relation with this, he explained that *"as a health center"* , the FAMT is " *legally obliged to keep clinical documentation for a minimum period of time (art. 17 Law 41/2002 on Patient Autonomy and art. 12 Law 21/2000 on rights of information concerning the health and autonomy of the patient and the clinical documentation, in relation to the criteria on retention periods of the Technical Commission on Clinical Documentation of the Department of Health of the Generalitat de Catalunya)."*

In fact, as reported by the FAMT, health regulations oblige to keep part of the clinical information for five or fifteen years, or even for a longer period depending on the document in question, from the date of the attention received.

Regarding this, article 12.4 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, in its wording given by law 16/ 2010, of June 3, amending Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, establishes, for what is of interest here, the following in relation to the preservation of the clinical history:

"4. The following documentation must be kept from the clinical history, together with the identification data of each patient, ***for at least fifteen years from the date of discharge of each care process :***
a) The informed consent forms.
b ***) The discharge reports*** **.**
(...)

6. The documentation that makes up the clinical history not mentioned in section 4 can be destroyed once ***five years have passed from the date of registration of each care process*** *.*

7. Notwithstanding what is established in sections 4 and 6, the documentation that is relevant to care effects, which must incorporate the document of advance wishes, and the documentation that is relevant, especially for epidemiological purposes, research or organization and operation of the National Health System. In the processing of this documentation, the identification of the affected persons must be avoided, unless anonymity is incompatible with the purposes pursued or the patients have given their prior consent, in

accordance with current regulations on Protection of personal information. Clinical documentation must also be kept for judicial purposes, in accordance with current regulations.

8. The decision to keep the clinical history, in the terms established by section 7, corresponds to the medical management of the health center, at the proposal of the doctor, with the prior report of the unit in charge of managing the clinical history in each center. This decision corresponds to the doctors themselves when they develop their activity individually."

Well, having reached this point, in which there is no question that the entity gave an answer to the person requesting the right of deletion, which conformed to what was provided for by the health legislation and indicated a reason why the data protection regulations allow the deletion of personal data to be denied (Article 17.3. *b* of the RGPD), it must be considered, however, that the response of the claimed entity is incomplete. And this because despite the entity informing in general terms about the legal obligation that prevents clinical data from being deleted, it cannot be ignored that this temporary forecast affects data whose accuracy or correctness is not questioned, while that in this case the entity did not give any specific response to the deletion of the controversial report, to which the applicant had expressly referred, indicating that it contained " *false" diagnoses.*

In this regard, it should be noted that, despite the fact that the claimant did not expressly request the specific deletion of the controversial report of the year (...), but of all his personal data, it is unquestionable that he based his request in the previous detection of said report with data that he believed to be erroneous.

Regarding said report, the claimed entity informed during the hearing procedure, that following the request of (...)/2022, it had reviewed the medical history of the claimant here and verified that the the only report contained in Mútua de Terrassa's medical history " *was a hospital discharge report dated (...)",* and that " *in the medical history of Mr (...) there is no other information to identify the existence of an error or falsehood in the content of this report* ". Also, that he does not have sufficient information to assess the content of said report of (...) because *"the medical professional who issued and signed the report does not currently work at FAMT"* , *"no other professional of the Service where attended to the patient remembered the case"* , and the claimant here *"has not been assisted by Mútua de Terrassa after these events either"* .

Therefore, from their statements, it can be seen that the entity detected the existence of the referenced report, and checked whether it had more data or information that could support the validity of the diagnoses included there, and, despite carrying out the said investigation actions without obtaining any clarifying results, in his response to the interested party he omitted any reference to them, and he did not require the interested party to provide information to substantiate his statements on which he based his request for the right to deletion

In this sense, article 68 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (hereafter LPAC), provides in point 1 that: "If the request *for initiation does not meet the requirements indicated in article 66, (...) or others required by the applicable specific legislation, the interested party must be required to, within ten days, repair the lack or attach the mandatory documents (...)"* . Specifically, article 66.1 of LPAC

establishes that the requests that are made must contain, among others, *"c) Facts, reasons and request in which the request is specified, with all clarity. (...)* "

Well, in this case, it is considered that what belonged to the entity, in the face of the lack of evidence and information on the treatment of incorrect data, which would allow a specific answer to be given on the report of (...), was formally require the person making the claim to provide the supporting documentation of the indicated inaccuracy, as provided for in article 68 of the LPAC. In view of the result of this action, the entity could already give a complete response to the interested party's request, specifically on the report of (...), or, in the event that once the deadline has passed granted without providing the supporting documentation for your request, reject the deletion of said report.

For all of the above, it is considered that the omission of this action by the FAMT entails the estimation of part of the claim relating to the denial of the right of deletion, since, although the entity gave a response to the request for the right to deletion relating to any personal data that may appear in the claimant's medical history, the entity's response was incomplete in relation to the person's express statements bidding on the alleged falsity of the data contained in the medical report of (...), on which the request for the exercise of the right of deletion was based.

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, request the person here claiming the amendment of his request of (...)/2022, regarding the incorrectness of the diagnoses contained in the medical discharge report for the year (...). And based on the documentation provided, or having exceeded the deadline granted without the interested party justifying the inaccuracy of these data, respond to the person making the claim within the legally provided deadline.

Once an answer has been given, in the terms set out, and the person making the claim has been notified, in the following 10 days the claimed entity must give an account to the Authority.

For all this, I resolve:

1. Partially estimate the guardianship claim made by Mr. (...) against the Fundació Assistencial de Mútua de Terrassa FPC (Hospital Universitari Mútua Terrassa) , regarding the deletion of the medical report of the year (...) .

2. Request the Fundació Assistencial de Mútua de Terrassa FPC (Hospital Universitari Mútua Terrassa) so that, within 20 counting days from the day after the notification of this resolution, it makes effective the right of deletion, in the manner indicated to the 5th legal basis, and report it to the Authority.

3. Notify this resolution to the Fundació Asistencianal de Mútua de Terrassa FPC (Hospital Universitari Mútua Terrassa) 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,