

File identification

Resolution of the rights protection procedure no. PT 94/2022, urged against the Parc Taulí Health Corporation of Sabadell.

Background

1. On 13/10/2022 the Catalan Data Protection Authority received a claim made by Mr. (...) against the Parc Taulí de Sabadell Health Corporation (hereinafter, the Corporation), for disregarding its request to exercise the right of rectification, which is provided for in article 16 of the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD).

The claimant expressed his dissatisfaction with the answer provided by the Corporation in relation to the exercise of the right of rectification that he had requested.

Specifically, in his request to exercise the right of rectification he referred to a medical report that Dra. (...) had been uploaded to his clinical history on 07/06/2022, where he indicated that: *" With respect to the patient's suspicion of suffering from a systemic mastocytosis, he was consulted with Internal Medicine (Dr. ...), without considering that it met the criteria"*. In this regard, the claimant maintained that this did not correspond to what Dra. (...) had told her through a phone call, and as a result, she asked *"That she immediately correct the report by saying what she told me, that is, that she and her superiors ruled out systemic disease in my case"*. Likewise, in said request he also added that he wanted information regarding whether the calls made by the hospital's doctors, and specifically those made to patients, were recorded, and if so, he requested that *"I will be informed of the relevant protocol to request such recording"*.

The claimant provided the following documentation:

- The electronic request to exercise the right to rectification of personal data in the field of health (in electronic format), where no date of the electronic registration is recorded.
- The medical report of 07/06/2022.
- The Corporation's letter (10/03/2022) in response to the claimant's request for rectification, where he is told that the requested rectification will not proceed.

2. On 10/21/2022, the claim was transferred to the Corporation so that within 15 days it could formulate the allegations it deemed relevant.

3. The Corporation made allegations through a letter received by the Authority on 08/11/2022, in which it set out, in summary, the following:

- That on 09/23/2022 an email was received at the email address of the DPD of the Corporation dpd@tauli.cat, where the person making the claim asked if the request for rectification had been received which had carried out *" through the Generalitat "*. Likewise, he also added that: *"The relevant part of the request is the one that has to do with: 1) That she immediately correct the report stating what she told me, that is, that she and her superiors ruled out systemic disease in my case"*.

- That on 09/26/2022 the DPD of the Corporation responded to the claimant's email stating that *"No, it hadn't been received, but I'm following through on your request. The answer will be sent by certified mail to the postal address listed in the clinical history.*
- That on the same 26/09/2022 he contacted the doctor who drew up the controversial medical report, asking for his opinion in relation to whether it was necessary to rectify what appeared in the report on this statement as inaccurate or incomplete: *"With respect to The patient's suspicion of suffering from systemic mastocytosis was discussed with Internal Medicine (Dr. ...), without considering that he met the criteria.*
- That on 30/09/2022, the doctor responsible for the report and the director of the Digestive Service respond to the previous request, indicating that the information in the report is correct (exact and complete).
- That on 03/10/22 the Corporation sends a letter of response to the interested person *" where he is offered the possibility to explain the answer to him personally".*

The Corporation provided several attached documents, among others, the following:

- The email dated 09/23/2022 sent by the person claiming to the Corporation.
- The e-mail from the DPD of the Corporation dated 26/09/2022, in response to the e-mail of the person making the claim.
- The response letter dated 09/30/2022, signed by the doctor responsible for the medical report and the Director of the Digestive Service, which states that: *"we have reviewed the patient's medical history and the corresponding report where the patient indicates that there is information to be corrected. All the text of the report is correct being exact and complete, which has already been personally explained to Mr. Gentleman "*.
- The letter of 03/10/2022, sent to the interested person where the rectification of his request is denied, indicating that: *" Your request has been evaluated, after the review of your medical history by the doctor who makes the report and the medical manager of the Digestive Service, it is concluded that the information that appears in the report, the reason for your request, is adequate and complete".* Likewise, in relation to the request for information on call recording protocols, it is indicated that *"he will receive a response from the Citizen Service Unit (uac@tauli.cat)".*

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 16 of 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, LOPDGDD), 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, sections 3 and 4 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 number of applications (...). 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. Next, it will be analyzed if the Corporation's negative response to the request for rectification made by the person making the claim was in accordance with the regulations set out in the 2nd legal basis, and if the requested rectification proceeds.

By means of a letter dated 03/10/2022, the Corporation denied the request for rectification made by the claimant, noting, for what is now of interest, the following: *" Your request has been assessed, after the review of your medical history by the doctor who makes the report and the medical manager of the Digestive Service, it is concluded that the information that appears in the report, reason for your request, is adequate and complete .*

As a starting point, it should be borne in mind that articles 16 of the RGPD and 14 of the LOPDGDD regulate the right of rectification as the right of the affected person to have inaccurate or incomplete data modified.

The right of rectification regulated in the RGPD and the LOPDGDD 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 legislative measures"* (article 23.1 of the RGPD).

As indicated, article 16 of the RGPD obliges the data controller to proceed with the rectification of personal data when these are inaccurate or incomplete. However, it should be noted that article 14 of LOPDGDD requires that the request for rectification clearly indicate which data it refers to and the correction that must be made, and furthermore, when it is precise, it must be accompanied by documentation justifying the inaccuracy or incompleteness of the data being processed. In short, that, in certain cases, to be able to demand the rectification of a piece of data, the error committed or its incomplete nature must be proven.

Well, in relation to the requested rectification, the person making the claim here has not accompanied documentation proving the supposedly erroneous or incomplete nature of the data; rather, he only bases his request for rectification on an eventual telephone conversation held with the doctor who drew up the medical report, in which, as he states, Dra. (...) he explained to him that he had discussed his case with another doctor, and they both considered that in his case *"the presence of systemic diseases was not demonstrated IN GENERAL"*. Specifically, the claimant requests that the assessment contained in the medical report dated 07/06/2022 be corrected, which states that *"With respect to the patient's suspicion of suffering from systemic mastocytosis, it was commented with Internal Medicine Dr. (...), without considering that it met the criteria"*, because he considers that it is not accurate. In this sense, it is inferred that, what the claimant intends, is to replace the reference in the medical report where it is ruled out that he suffers from *"systemic mastocytosis"*, by the reference where it is ruled out that *"the presence of systemic diseases EN GENERAL"*.

For their part, the doctor who drew up the report and the medical manager have confirmed its accuracy, in the sense that the information on the health data that appears in the report *"is adequate and complete"*.

In this regard, it should be noted that in order for this Authority to consider that the diagnosis contained in the report was inaccurate data, it would be necessary for the person making the claim to provide a medical report confirming the incorrectness of this information, that the doctor who issued it had recognized a medical or other type of error, or in the last resort that *"prima facie"* turned out to be information lacking any logic or meaning, or clearly inconsistent with the rest of the information contained in the same or other reports. But as has been said, the Corporation has stated that both the doctor who drew up the report and the Director of the Service reviewed this information and confirmed that the information contained in the medical report was *"adequate and complete"*. Given this, and in view of the documentation provided, the Authority considers that the information contained in the report does not lack any logic or meaning, nor is it incongruous in view of the rest of the information provided.

So things are, to the extent that there are not sufficient elements in the present rights protection procedure to confirm the inaccuracy of the health data appearing in the medical report, the claim regarding the rectification of the medical report dated 07/06/2022 that appears in the medical history of the person making the claim.

Finally, a paragraph should be made in relation to the request for information contained in the same request to exercise the right of rectification, on whether the entity records any calls between doctors or from them to patients and, if so, what would be the protocol for requesting access to one of these phone calls. In this regard, it should be indicated that said request, formulated in generic terms, is considered to be a request for information that is outside the scope of this resolution on the protection of rights, and that it would also not find a place in an eventual right of access in Article 15 of the RGPD, since the claimant is not requesting access to his personal data, such as the eventual recording of a certain telephone conversation, but to information in general about the system implemented by the entity in relation to telephone conversations.

For all this, I resolve:

1. Dismiss the claim of Mr. (...) against the Parc Taulí de Sabadell Health Corporation, regarding the rectification of the health report dated 07/06/2022 that appears in his medical history, for the reasons explained in the 3rd legal basis .
2. Notify this resolution to the Corporació Sanitària Parc Taulí de Sabadell 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,