

File identification

Resolution of the rights protection procedure no. PT 98/2022, petition against the Department of Health.

Background

1. On 08/11/2022 the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, the person making the claim) - formulated through his representative (Mrs. (...))-, for which he presented a claim for the alleged neglect of the right of access to his data personal, which he had previously exercised before the Department of Health (hereinafter, the Department).

The claimant provided various documentation relating to the exercise of this right. Among others, the copy of the access request submitted on 11/08/2022 - through the same representative - through which he requested access to the traceability of the shared clinical history (henceforth, HC3) referring to the period from 01/01/2019 to 08/11/2022, and the copy of the HC3 for the period from 01/01/2012 to 08/11/2022. Likewise, he also provided a copy of the email that, on 12/10/2022, from the Catalan Health Service (hereinafter, CatSalut, an entity that manages and attends to requests to exercise citizens' rights in relation to the data contained in the HC3), is sent here claiming, communicating that the "requested information" has already been sent, and copies of the emails that on 12/10/2022 and 02/ 11/2022 the claimant here addressed CatSalut insisting that his request dated 11/08/2022 would not have been answered.

2. On 11/16/2022, the claim was transferred to the Department of Health so that within 15 days it could formulate the allegations it deemed relevant.

3. On 12/22/2022, the Authority reiterated the order indicated in the previous antecedent, given that the Department of Health had not made a statement in relation to the claim that had been transferred to it.

4. The Department of Health made allegations in a letter dated 02/13/2023, in which it set out, in summary, the following:

- That, " *as a result of the complaint submitted to this Authority, it has been observed that the answer given to the complainant referred to her medical history, although she requested information about her sister [...], of whom she had certified that she was a tutor.*"
- That, " *noticing the error, the appropriate information has been notified to the complainant.*"

The following documentation was attached to the statement of objections:

- Copy of an email (date not included) sent by CatSalut to the claimant, identified with the subject "*Response to registration request 9015 – 1637481/2022 11/08/2022*", in which are attached two encrypted files that would contain information related to the claimant here.

- Copy of an email that the claimant sent on 07/02/2023 to CatSalut, in response to the documentation provided. In this email, the person claiming made it clear that, in relation to the information sent, he would only have received the traceability of the HC3 for the period 19/05/2020 to 10/01/2023, and pointed out that the information relating to the period was missing between 01/01/2019 to 05/18/2020. In this same email, the claimant here also asked if the reports sent (seven reports issued by different centers, between 01/07/2010 and 01/21/2023) are all the documents contained in the HC3.

5. On 02/24/2023 the Authority sent a letter to the claimed entity to confirm whether it had provided the information that the claimant claimed not to have received and that referred to the traceability of the HC3, corresponding to the period 01/01/2019 to 08/11/2022, and if the Department had sent him a copy of all the existing documentation, relating to the HC3 from 01/01/2012 to 08/11/2022.

6. On 03/24/2023, the Department of Health responded to the office indicated in the previous antecedent, in the following terms (the emphasis is ours):

- That, " *the traceability provided to the applicant refers to the accesses made to the shared medical history from 05/19/2020 to 01/31/2023, the date on which his request was processed. Taking into account that the person made his request on 11/08/2022, it is confirmed that the information provided to the reporting person on the requested traceability is all the existing information.*
- That, " *with regard to the information related to his medical history shared in the period between 01/01/2012 and 08/11/2022, it is confirmed that the information that has been provided to him is the existing in the requested period.*

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 right to obtain from the person in charge of the treatment confirmation if they are processing or not data personal that _ concern and, in such case, right of access to the data personal and next information :

- a) the purposes of the treatment ;*
- b) the categories of data personal in question ;*
- c) the recipients or the categories of recipients to whom they will or will be communicated data communicated _ personal , in particular recipients in third parties or organizations international ;*
- d) if possible , the expected data retention period personal or, if not possible , the criteria used to determine this period;*

- e) the existence of the right to request the rectification or deletion of data from the person in charge personal data or the limitation of data processing personal relating to the interested party , or to oppose said treatment ;
 - f) the right to file a claim before a control authority ;
 - g) when the data there are no personal ones obtained from the interested party , anyone available information about its origin;
 - h) the existence of decisions automated , 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 consequences provided for by dicho treatment for the interested party .
2. When they will be transferred data personal data to a third country or an international organization , the interested party will have right to be informed of the guarantees appropriate under article 46 relating to the transfer . _
3. The person responsible for the treatment will provide a copy of the data personal object of treatment . The person in charge may perceive by anyone another copy requested by the interested party a canon reasonable based on administrative costs . When the interested party present the request by media electronic , and unless it 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 affect negatively to 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 responsible for the treatment will facilitate the interested party information related to sus 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 . Dicho plazo podra extend 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 of these extensions within one month of receipt of the request , indicating the reasons for the delay . When the interested party present the request by media electronic , the information will be provided by media electronic when be possible , unless the interested party request that it be provided in another way.
4. If the data controller does not comply with the request of the interested party , the will inform yes delay , no later than one month has passed since the receipt of the request , the reasons for its non- action and the possibility of presenting a claim before a control authority and take legal action .
5. The information provided under articles 13 and 14 as well as all communication and anyone performance carried out under articles 15 to 22 and 34 will be entitled free _ When the requests they are manifestly groundless or excessive , especially due to him character repetitive , the person in charge may :
- a) charge a fee reasonable based on administrative costs faced to facilitate information or communication or perform the action requested , or
 - b) refuse to act in respect of the request .
- The person responsible for the treatment will bear the burden of proving character manifestly groundless or excessive 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 set out the applicable regulatory framework, it is then necessary to analyze whether the Department of Health has resolved and notified, within the period provided for by the applicable regulations, the request made by the person making the claim.

In this regard, it is certified that on 08/11/2022, a letter from the person claiming was received by the claimed entity through which he exercised the right of access to his personal data.

In accordance with article 12.3 of the RGPD, the Department of Health 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 Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party (as is the case) it starts from the date on which the 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 (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art. 40.4 LPAC).

Well, from the documentation contained in the proceedings (4th record) it appears that the Department of Health did not respond to the claimant within the one month period required by the regulations. Indeed, it was following the transfer of the claim by this Authority to the Department that the latter - through CatSalut - responded to the request that the claimant had made on 08/11/2022. Consequently, since the claim was based on the lack of response to the request to exercise the right of access, and that it has been proven that the Department of Health did not resolve and notify the said request, the claim should be estimated at this point. However, it is proven that the Department responded to the request for access extemporaneously. This notwithstanding what will be said below regarding the substance of the claim.

4. Once the above has been settled, it is necessary to analyze the merits of the claim, that is to say, if in accordance with the precepts transcribed in the 2nd legal basis, it is necessary to estimate access to the data in the terms requested by the claimant person

As a starting point, it should be noted 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.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. The reasons for denying the right of access are found in article 23 of the RGPD, which must be provided for *"through measures legislative"* (art. 23.1 RGPD).

Well, as can be seen from the antecedents, the claimant requested access to the traceability of the HC3, referring to the period from 01/01/2019 to 08/11/2022, and requested a copy of the HC3, for the period from 01/01/2012 to 08/11/2022.

It is certified, because it is clear from the email that the claimant here sent to CatSalut on 02/07/2022 (4th record) that, as part of this procedure, provided the claimant here with a total of seven medical reports included in the HC3 and the traceability corresponding to the purchase period between 05/19/2020 and 01/10/2023. This would be the only information/documentation, among those requested by the person making the claim, that the Department would have, as this body informed the Authority that expressly questioned it in this regard (antecedents 5th and 6th).

In short, the Department provided the claimant with all the information it had, which is why it must be concluded that its right of access has been satisfied - extemporaneously - with regard to the copy and traceability of the HC3 requested.

Article 21.1 LPAC, under the heading "obligation to resolve" provides that:

"The Administration is obliged to issue an express resolution and notify it in all procedures, regardless of the form of initiation. In cases of prescription, waiver of the right, expiration of the procedure or withdrawal of the request, as well as sudden disappearance of the object of the procedure, the resolution consists of the declaration of the circumstance that occurs in each case, with indication of the facts produced and the applicable rules. (...)"

In the same sense, article 53.2 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, is pronounced.

For all this, I resolve:

1. Partially estimate the claim, given that the Department of Health did not respond in time to the claimant's request, in accordance with what was stated with the 3rd legal basis; without proceeding to require any action, to the extent that the said Department responded extemporaneously to the request and provided the claimant with all the documentation it had, in accordance with what is set forth in the 4th legal basis.
2. Notify this resolution to the Department of Health 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 February 20, 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 term 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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