

## File identification

Resolution of the rights protection procedure no. PT 106/2022, relating to the Hospital Clínic de Barcelona.

## Background

1. On 05/12/2022 the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, the person making the claim) - formulated through his representative -, for which he presented a claim for the alleged neglect of the right of access he had previously exercised before the Hospital Clínic de Barcelona (hereinafter, the hospital). The person making the claim complained about the fact that the Hospital would not have provided him with the "original notes" in the clinical course of the visits on 09/12/2022 and 09/21/2022, but would have given him a version of the clinical course which, according to him, would have been modified by the "facultatives" with the aim of hiding the comments and assessments made initially.

In order to certify the exercise of this right, the claimant provided the following documentation:

- a) The email he sent on 09/11/2022 to the Clinical Archives and Documentation Unit (hereinafter, UDCA) of the Hospital, through which he requested, for what is of interest here, the clinical course of the visits on 12/09/2022 and 21/09/2022, to neurology and psychiatry, respectively.
- b) The email sent from the Hospital to the claimant on 11/15/2022, through which he was provided with the *"requested documentation, on the courses referred to"*.
- c) The email sent by the person claiming to the Hospital, on 11/15/2022, in which he complained about the fact that the documentation that would have been sent to him did not correspond to the "original version of the requested *information*", and requested that a copy of this version be sent to him. In this regard, in this email the claimant indicated *" that ICS keeps in its database the different versions of the documents generated by the professionals."*
- d) The e-mail sent from the Hospital to the person making the claim, on 11/16/2022, through which it was informed of the following: that the information sent is the only existing version of the two annotations requested; that after consulting the *" responsible doctors"*, they have confirmed that *" these notes are published in the Shared Clinical History of Catalonia, to which CATSALUT doctors have access"*.
- e) The email sent by the claimant to the Hospital, on 11/16/2022, in which he communicated that the problem had not been resolved, and added that *" the people who have read the notes find it very difficult to believe that internally you do not have the means to avoid and control the situation they have created"* .

2. On 12/16/2022, the claim was transferred to the Hospital so that, within 15 days, it could formulate the allegations it deemed relevant.

3. On 10/01/2023, this Authority received the Hospital's statement of objections, through which it set out, as far as is relevant here, the following:

3.a) That, after reviewing the medical history of the person making the claim, it has been found that " *there are two records of the clinical course: on 09-12-2022 and another on 09-21-2022. When a professional makes an annotation of a clinical course and closes (signs) it can no longer be modified. And in a few minutes it is published in the shared clinical history (HC3). The only recourse the professional has is to make a new entry that will have the date and time of the moment he makes it and request the Clinical Documentation Unit to delete the first one, which is not recorded to have happened*".

In order to substantiate these statements, the claimed entity provided a copy of the record of notes on the clinical course of the claimant here, in which it is observed that the only notes contained are, a first dated 21/09/ 2022 at 12:55:21 p.m. by a psychiatric professional; and, a second, dated 12/09/2022 at 10:19:35 a.m. carried out by a neurology professional.

3.b) That, " *the annotations referenced are the same as those in HC3 (with the same content) and in the publication record in HC3 of our system it is only recorded that these annotations have been published once and in the scheduled date*".

3.c) That, " *we have not found any annotation of the clinical course deleted in the clinical history of this patient. Nor have we found any other type of record or document removed from the patient corresponding to these dates.*"

3.d) That " *the conclusion is that in the patient's clinical history there is the original version of these two annotations, and they have not been modified afterwards nor have any of them been deleted. Indicate that the Clinical Hospital publishes the clinical course in HC3 immediately (without respecting the points and part of the original in our system), that is to say, it is visualized differently between the care manager and HC3 and, initially, may make you think that it is different. But we checked it and the content is exactly the same.*"

4. On 02/16/2022, a letter was sent to the complaining party through which, on the one hand, it was brought to his attention that the Hospital had informed the Authority that the information that had been given to him sent on 11/15/2022, it corresponded to the original notes of the clinical course, and that these had not been modified by the attending physicians. On the other hand, he was asked that, if he considered that the Hospital had another version of the notes on his clinical course, provide some proof or indication from which it could be seen that, indeed, this other information was in the possession of the entity, and that if it does not do so within ten days, it would be considered that the Hospital had fully satisfied the right of access claimed.

This term has expired without the claimant having shown his disagreement by understanding that his right of access has been satisfied.

## **Fundamentals of Law**

1. The director of the Catalan Data Protection Authority is competent to issue this resolution, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the 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 controller confirmation of whether or not personal data concerning him or her 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."*

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 Hospital resolved and notified, within the period provided for by the applicable regulations, the request to exercise the right of access exercised by the person making the claim.

The background first shows that, on 09/11/2022, the claimant submitted - by email - a request for access to the Hospital's UDCA, through which he requested the notes on the clinical course of the visits on 12/09/2022 and 21/09/2022.

In accordance with article 12.3 RGPD, the Hospital 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 this regard, it is certified that the request for access made by the interested person to the Hospital on 09/11/2022 was resolved and notified on 15/11/2022.

Therefore, in the present case, it must be concluded that the Hospital resolved and notified the claimant's request to exercise the right of access within the legally provided period.

4. With regard to the substance of the claim, regarding the right of access to the annotations of the reference clinical course, the Hospital has certified that, in response to the access request made by the person making the claim, delivered the notes to the clinical course of the visits on 09/12/2022 and 09/21/2022, by email dated 11/15/2022. And, he has also certified that, on 11/16/2022, he reported here claiming that the information sent on 11/15/2022 was all the information available on the requested notes, after confirmation with the health professionals involved. Likewise, it also indicated that the information sent coincides with the annotations published in the HC3.

Well, consulted by this Authority, the claimed entity has reiterated that the information provided is the original version of the requested annotations, and that the information has not been manipulated or modified. In this regard, he has argued that health professionals cannot modify the annotations to the clinical course they carry out, and that, in the present case, it is not known that any annotation referring to the clinical course of the claimant has been removed from the visits of the days 12/09/2022 and 21/09/2022. In this sense, the Hospital added that it publishes the clinical course in HC3 *"in a row (without respecting the points and part of the original in our system), that is to say, it is visualized differently between the care manager and HC3 and, at the outset, it can make you think that it is different"*.

Well, on 02/16/2022 this Authority informed the person claiming about the content of the letter presented by the Hospital, which claimed to have provided the requested information, and granted him a period of ten days to do so that he present the allegations or evidence he considers relevant in case of non-conformity, expressly warning him that, after the period indicated has passed without stating anything to the contrary, it would be understood that the Hospital had fully attended to his request for access. The person claiming has not alleged anything against it within the period granted, which is why it should be considered that his right of access has been satisfied in the terms of his request, with regard to the information referred to clinical course.

Article 21.1 of the LPAC provides:

*"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.

In short, and from the perspective of the right of access to one's own data regulated in the RGPD, the claim should be dismissed, given that the claimed entity has responded to the claimant's request for access, by regarding the notes of the clinical course of 09/12/2022 and 09/21/2022.

**For all this, I resolve:**

1. Dismiss the guardianship claim made against Hospital Clínic de Barcelona.
2. Notify this resolution to Hospital Clínic de Barcelona and to the person making the claim.
3. Order the publication of the resolution on the Authority's website ([apdcat.gencat.cat](http://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 Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within 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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