

File identification

Resolution of the rights protection procedure no. PT 113/2023, brought against the Department of Health, the Catalan Health Service and the Catalan Health Institute.

Background

1. On 15/12/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (from now on, the person making the claim), for which he made a claim for the alleged disregard of the right to the portability of his personal data, which he had previously exercised before the Department of Health.

The claimant provided various documentation relating to the exercise of this right:

- A copy of the email dated 08/27/2022, sent from the automatic messaging email address of the corporate platform for services and procedures of the Generalitat de Catalunya ("comunicat.generalitat@gencat.cat"), to 'e-mail address of the person claiming ("(...)@gmail.com"). The subject of the e-mail was "Confirmation of registration of the procedure with code (...)", by which the entity acknowledged the receipt of the request made by the claimant "of the exercise of the right to portability of personal data in the field of health."
 - A screen print of the procedure consultation platform, where it is observed that the procedure of the request submitted by the claimant on 08/27/2022, with code no. (...) (file no. (...)), on 10/10/2022 it was "In processing".
2. On 12/22/2022, a letter was sent to the person claiming to provide, within 10 days, a copy of the form "Request for the exercise of the right to the portability of personal data in the 'health field', with the code (ID) (...), submitted on 08/27/2022.
 3. On 12/23/2022, the claimant responded to this office and provided a copy of the application form for the exercise of the right "to the portability of personal data in the field of health", by which asked for the following:

"All the data from the following RATs of the hospitals Josep Trueta de Girona, CAP Santa Clara de Girona, CAP Güell de Girona and any of the other centers that may contain my data. following RAT:

- Central register of insured persons
- Registration of the minimum basic set of data (CMBD)
- Waiting list registration
- Integrated health information system of Catalonia
- Identification management for access to information systems and technologies
- Registration of pharmaceutical provision
- File of patients treated in hospitals attached to the Catalan Institute of Health
- File of users registered via the web
- File of patients treated in Primary Care centers of the Catalan Institute of Health
- Registration of advance wishes

- Training record for the use of defibrillators by non-health personnel
- Occupational health file
- Vaccination register of Catalonia
- Epidemiological surveillance
- STOP COVID2019
- Authorizations and communications for carrying out diagnostic tests for COVID-19.”

It follows from the content of this request that, despite the fact that the request of 08/27/2022 made reference to the exercise of the right to portability, in pureness the claimant was requesting the exercise of the right of access, provided for in article 15 of 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 movement of these (RGPD), and not the right to portability of your personal data.

It is noted that the informative footer on data protection included in the application form indicates that the "General Secretariat of the Department of Health" is the unit responsible for guaranteeing "the exercise of the rights of access, rectification, opposition, portability , and limitation" (AROPOL), in relation to personal data in the field of health.

4. On 12/01/2023, the claim was transferred to the Department of Health, so that within 15 days it could formulate the allegations it considered relevant.
5. On 05/26/2023, the claimed entity made allegations with a written statement in which, in summary, it stated the following:
 - That "There is some confusion in relation to the type and origin of the information requested by the person making the claim. Although he initially mentions his data that can be found in three specific care centers - the Josep Trueta Hospital in Girona, the CAP Santa Clara in Girona and the CAP Güell in Girona -, he then makes a generic reference to 'some of the other centers that may contain my data', which is very imprecise since they are very numerous and various of the care centers of the Catalan public system and some concreteness would be required on the part of the person making the claim."
 - That "The ownership of the care centers listed by the person making the claim is owned by the Catalan Institute of Health. However, the final generic forecast also requires considering the information that other care centers may have on this person."
 - That "(...) there is no correlation between the care centers he refers to, all three of which are owned by the Catalan Institute of Health, with the data processing he lists, which correspond to various managers, (...)."
 - That the persons responsible for the treatment to which the different treatments refer are the Department of Health, the Catalan Health Service (CatSalut) and the Catalan Institute of Health (ICS).
 - That "There is also no correlation between the data contained in this treatment and the data treated by the three care centers specifically listed by the person making the claim."

- That "Despite the complex situation that has been exposed, from the receipt of the guardianship procedure by the Department of Health, actions are initiated to attend to the access indicated by the APDCAT."
- That "Considering that the request made by the person making the claim is very extensive and involves several entities responsible for various treatments, the Department of Health has chosen to lead the management and response by centralizing the actions and coordinating the responses for the purposes of channeling the attention of the requested right."
- That "(...) the Department of Health has sent CatSalut and ICS requests for attention to the claimant's access request, identifying the treatments for which information is requested for each of the two entities and requesting that the request be sent to the functional managers of each of the affected treatments."
- That "The extent of the request and the complexity of the management to receive the answers from the functional managers of each of the treatments, which, at the same time, have been coordinated by each of the responsible entities affected, requires a great investment of time that generates a delay in the final answer."
- That "(...) there are treatments for which information is not yet available in relation to the request made. (...)"
- That "Despite this and with the intention of meeting the claimed right of access, it is considered appropriate to respond with the information currently available." The claimed entity attaches to its writing the referenced response as "(Annexes 1 to 4)."
- That "(...) with reference to the treatments for which a response has been received, it must be made clear that not all of them contain information about the person making the claim. (...)".
- That "The information received so far is sent to the person making the claim. Proof of shipment and receipt is attached (Annex 5)."

The claimed entity accompanied its written response with the following documentation:

- Copy of the information and documentation that was sent to the claimant on 05/24/2023, and that refers to him/her:
 - Copy of the Central Register of Insured Persons (RCA).
 - Copy of the Register of pharmaceutical benefits.
 - Copy of the clinical course referring to the person making the claim.
 - Copy of the Vaccination Register of Catalonia.
- Copy of the email dated 05/24/2023 at 11:02 p.m., sent from a CatSalut corporate email address, with the subject "Portability request response / Accessibility interpreted", by which they gave the response Next:

"(...) We will receive your request for ARCO rights, in which you refer to the right to portability of the data available in the shared clinical history of Catalonia, with the request code (...).

It has been interpreted as a right of access. We attach the information available on the different treatments.

Once you confirm receipt of the @ we will send you the access key.

Cordially,"

- Copy of the e-mail dated 25/05/2023 at 09:17 hours, by which the claimant replied to the e-mail transcribed above, indicating "I confirm receipt of the 7z files".

Fundamentals of law

1. The director of the Catalan Data Protection Authority is competent to solve this procedure, 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 the RGPD, regarding the right of access of the person concerned, 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.”

In relation to the rights provided for 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 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:

- charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or
- 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.

(...)"

Article 13 of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (LOPDGDD), determines the following, also in relation to the right of 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 request submitted by the person making the claim received a response within the period provided for by the applicable regulations.

In accordance with article 12.3 of the RGPD, the data controller is obliged to respond to the request to exercise the requested right within a maximum period of one month, counting from the date of receipt of the request

Regarding this, it is certified that on 27/08/2022 the Department of Health received the claimant's request, through which he exercised the "right to portability" of his personal data in the field of health. However, as has been advanced in the antecedents of this resolution, it follows from the wording of the request that the claimant exercised a right of access to his personal data.

In this case, you must take into account that in your statement of objections the Department of Health states that the personal data to which the applicant sought access were processed by three different responsible parties: the Department of Health, CatSalut and the ICS.

Next, the Department of Health states that, on 05/24/2023, once the information on the different data treatments carried out by each of the three responsible for the treatment has been compiled, a single response is given to the person claiming "with the information that is currently available". In this regard, it is certified that, on 05/24/2023, CatSalut responded by email to the claimant's request to exercise the right of access, with code no. (...). In

other words, regardless of whether the processing of personal data to which the applicant wanted to access was under the auspices of three different data controllers, it was chosen to give a single answer that encompassed all the information available to each of them.

It should be noted that this Authority values very positively the management and coordination actions carried out by the Department of Health to collect all the information on the processing of the personal data of the person making the claim, carried out by all the responsible entities affected by the request, and thus be able to give an answer. It must also be recognized that the complexity and generic terms in which the claimant's request is formulated may have caused a slowdown in processing and responding to this request. However, none of these circumstances would justify the delay of almost 9 months in responding to the claimant.

Consequently, it is necessary to declare that the response dated 05/24/2023 is extemporaneous. This, without prejudice to what will be said below regarding the substance of the claim.

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

Before analyzing the merits of the claim, it should be noted that, along the same lines as the request of 08/27/2022 submitted by the claimant to the Department of Health, in the claim submitted to this Authority also refers to the neglect of the exercise of the "right of portability".

As has already been said, it is necessary to start from the premise that, from the request dated 08/27/2022, it follows that the person claiming in purity exercised a right of access to his personal data. For this reason, this resolution only analyzes the issue related to the claim regarding the neglect of this right, it can no longer be considered that the exercise of the right of portability was part of the initial request made before the Department of Health.

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 this case, access the 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 exercising other rights, such as those of rectification, deletion, limitation, portability or opposition. For this reason, the limitations to this right of access must be minimal and must be provided for "through measures legislative " (art. 23.1 RGPD).

In this case, it is necessary to highlight what has already been pointed out in the previous section, regarding the complexity of the information to which the claimant sought to access - which referred to three specific assistance centers dependent on the ICS, and also extends it to "other care centers" - implied that there were three persons responsible for the treatment obliged to respond to it.

Therefore, although both in his initial request and in this claim the person making the claim only refers to the Department of Health, this resolution also has effects for CatSalut and the ICS, given that they are the three entities responsible for the treatments of data subject to the request in question.

Thus, in this case, each entity should have given the person making a claim a specific answer regarding the data processing for which it is responsible (art. 12.3 RGPD). However, as the Department of Health stated in its statement of objections, given "the extent of the request" and the "complexity in managing the responses", from this department decided to "lead the management" of the request "by centralizing the actions and coordinating the responses for the purposes of channeling attention to the right requested."

In relation to this, it should be noted that this Authority has only been informed about the final and unitary response that was sent to the claimant on 05/24/2023. Since it is not known the terms in which the Department of Health would have transferred the claimant's request to CatSalut and the ICS, nor the terms in which these entities would have responded to this request for information, this resolution only analyzes the issue related to the aforementioned unitary response.

By means of the email of 05/24/2023, the claimant was informed that it had been "interpreted" that his request to exercise the right of "portability" was "a right of access". Likewise, he attached a copy of the "available information" on some of the data processing that the claimant listed in his request, and which contained data relating to him: from the Central Register of Insured Persons (RCA), from Register of pharmaceutical provision, the Vaccination Register of Catalonia and its clinical course.

Thus, it should be considered that the response did not inform the person making the claim about the circumstances that led to the coordination and preparation of a unitary response by the three entities responsible for the requested treatments. It also does not comply with the provisions of articles 12 and 15 of the RGPD, given that only the information that was "available" at that time was sent, without specifying the reasons that prevented providing more information about the rest of the treatments that the person claimant listed in his application.

In short, this Authority considers that this claim for protection of the right of access should be upheld, given that during the procedure it was proven that the person making the claim exercised the right of access that affected the Department of Health, CatSalut and the ICS, and that with the answer given on 05/24/2023 it cannot be considered that the three responsible entities have exercised this right. While they gave you the information about some of the data processing related to your person, no specific answer was given about the rest of the data processing related to the request. He was also not told the reasons why information is not available on some treatments.

5. In accordance with the provisions of 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 to, within 10 days make the exercise of the right effective.

In accordance with this, and for reasons of procedural economy, it is necessary to require the Department of Health, CatSalut and the ICS that, within 10 counting days from the day after the notification of this resolution, each of the referenced entities exercise the claimant's right of access and give an individual response to the claimant, in relation to the treatments for which they are exclusively responsible. In these responses, they must inform the person claiming whether or not their personal data is being processed in relation to the processing listed in their request and, if applicable, indicate the reasons why this information is not available .

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 Department of Health, CatSalut and the ICS, respectively, must report to the Authority.

resolution

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against the Department of Health, the Catalan Health Service (CatSalut) and the Catalan Health Institute (ICS).
2. Request the Department of Health, the Catalan Health Service (CatSalut) and the Catalan Health Institute (ICS) that within 10 days, counting from the day after the notification of this resolution, take effect the right of access exercised by the claimant, in the manner indicated in the 5th legal basis, only in relation to the data treatments that are their responsibility. Once the right of access has taken effect, in the following 10 days the claimed entities, respectively, must report to the Authority.
3. Notify this resolution to the Department of Health, the Catalan Health Service (CatSalut), the Catalan Health Institute (ICS) and the person making the claim.
4. Order that the resolution be published 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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, on an optional basis, the interested parties can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after their notification , in accordance with the provisions of article 123 et seq. of Law 39/2015. They can also directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after their notification, in accordance with Law 29/1998, of July 13, regulator of the administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate to defend their interests.

The director

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