

File identification

Resolution of the rights protection procedure no. PT 12/2023, urged against the EAP Poble Sec, SLP (CAP Les Hortes).

Background

1. On 07/02/2023, the Catalan Data Protection Authority received, by transfer from the Spanish Data Protection Agency (AEPD), the claim presented on (...) by Mr. (...) (henceforth, the person making the claim), due to the alleged neglect of the right to rectification of his personal data, which he had previously exercised before the Catalan Institute of Health (ICS).

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

- An "urgent attention" medical report, issued on (...) by CUAP Manso of the ICS, specifying that the claimant " (...) (...) "
- A copy of the request to exercise the right of rectification that the claimant submitted to the ICS, on date (...), by means of which he requested the rectification of several diagnoses contained in his summarized medical history from CUAP Manso.
- A copy of the summary medical history of the claimant, with date of extraction from (...). It is noted that the update date of the information included is the day (...), and that the unit providing this information is EAP Barcelona 3A-Les Hortes-Poble Sec. The claimant points out the seven incorrect diagnoses:
 - On date (...), " (...)".
 - On date (...), " (...) ".
 - On date (...), " (...)".
 - On date (...), " (...)".
 - On date (...), " (...)".
 - On date (...), " (...)".
 - On date (...), " (...)".
 - On date (...), " (...)".

2. On 02/28/2023, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it deemed relevant.

In the same transfer office, the Authority also required the ICS to report on whether it had processed and resolved the request to exercise the right of rectification that the claimant had addressed to it on (...), or he transferred her to the Catalan Health Service (CatSalut).

3. On 02/03/2023, the ICS made allegations with a written statement in which, in summary, it stated the following:

- That the claimant "(...) made a request to the CUAP Manso to correct diagnoses that appeared in his history and which he claimed had been included in his visit on (...). (...)"
 - That the claimant "(...) went in person in the month of (...) to the CUAP Manso, where an in-person interview was held where it was explained to him that the diagnoses listed in his history have not been introduced by no professional from CUAP Manso, but by a professional from another center, specifically CAP les HORTES, which also does not belong to the ICS. It was indicated to him that it was the professional who had made the diagnosis who had to make the corresponding amendments to the clinical course."
 - That "In order to speed up the procedure, the patient was told that the center itself would contact the CAP les Hortes to transfer the case, a procedure that was also carried out."
 - That "We cannot provide additional documentation, since the information to the citizen according to the erroneous diagnoses could not be rectified from the CUAP Manso, but from the center that incorporated this information, it was given verbally and in person."
4. As a preliminary question regarding competence, it should be borne in mind that despite the fact that in the request to exercise the right of rectification dated (...), and in the claim dated 02/01/2023, the person claiming refers to the ICS Manso CUAP, it is clear from the allegations made by the ICS that the incorrect diagnoses that the claimant states are contained in his summary medical history were not entered from the Manso CUAP, nor from from any care center belonging to the ICS, but from the EAP Poble Sec care center (CAP Les Hortes) (henceforth, EAP Poble Sec). For this reason, this resolution only refers to this EAP.
5. On 03/14/2023, the claim was transferred to the EAP Poble Sec, so that within 15 days it could formulate the allegations it deemed relevant.

In the same transfer office, the Authority also required the EAP Poble Sec to provide a copy of the supporting documentation of the date on which it received the request to exercise the right made by the person claiming the date (...), which the ICS transferred to him. Also, the supporting documentation of the notification of the resolution of the request to the person making the claim.

The deadline expired and the EAP Poble Sec did not present allegations, nor the requested documentation.

On 06/23/2023, given the EAP's lack of response, the Authority reiterated the request in the same terms and granted a deadline of 5 days to respond .

The deadline has passed and the EAP Poble Sec has not provided the requested documentation.

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 the Catalan Data Protection Authority.
2. In accordance with article 3 of Law 32/2010, the EAP Poble Sec is included within the competence of the Authority, given that it is part of the integral health system for public use of Catalonia (SISCAT), by virtue of the formalization of assistance activity contracts with CatSalut of the Generalitat.
3. Article 16 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 such data (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 is incomplete, including by means of an additional declaration.

Article 14 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 rectification:

"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 provided for in articles 15 to 22 of the RGPD, paragraphs 3 to 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. 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 this same sense, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, provides the following in relation to the protection of the rights provided for by the regulations on the protection of personal data:

"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."

4. Once the applicable regulatory framework has been set out, 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 date (...), the claimant submitted to the ICS a request to exercise the right to rectify his personal data relating to the CUAP Manso care center, belonging to the ICS. However, it appears from the ICS's statements that, following this request, the CUAP Manso informed the person claiming that the diagnoses listed in their summary medical history had been entered from the EAP Poble Sec care center and that, for this reason, it is up to this EAP to correct any errors that may exist. CUAP Manso also explained to the claimant that, in order to speed up the processing of his request for rectification, CUAP Manso himself would be responsible for transferring his date request to EAP Poble Sec (. ..).

In relation to this, it should be noted that the Authority does not know the terms in which the ICS transferred the request to the EAP Poble Sec, given that none of the referenced entities has provided the documentation to prove this. The Poble Sec EAP has also not certified that it has responded to the request for rectification made by the person making the claim, neither within the one-month period provided for this purpose nor subsequently.

5. Once the above has been established, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 3rd legal basis, in this case the rectification of the data is appropriate in the terms to tender the claimant.

As a starting point, it should be borne in mind that article 16 of the RGPD regulates the right of rectification as the right of the affected person to modify data that is inaccurate or incomplete, in order to comply with the regulated principle of accuracy in article 5.1. d of the RGPD.

The right to rectification is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. For this reason, the limitations of this right must be minimal and must be provided for " through legislative measures " (art. 23.1 RGPD).

In accordance with what is required by article 14 of the LOPDGDD, in the request for rectification of the data presented by the person making the claim, it was made clear which data related to him/her had to be rectified:

- With respect to the five diagnoses dated (...), it indicated that the urgent care report dated (...) needed to be incorporated into his medical history. This was supported by a copy of the summary medical record in which he pointed out the incorrect diagnoses and a copy of the aforementioned urgent care report. Therefore, this Authority considers that the person making the claim specified the data that needed to be rectified.
- With respect to the two date diagnoses (...), it indicated the incorrect data that needed to be corrected, but did not indicate the specific correction it was requesting, so there was a lack of information to be able to make the correction effective, if applicable.

In any case, the EAP Poble Sec should have responded to the person making the claim regarding their request for rectification (art. 12.3 RGPD). With regard to the five diagnoses dated (...), I should have informed you about whether the right of rectification had taken effect in the terms you had requested, or set out the reasons why it was not rectify the diagnoses. In relation to the two diagnoses dated (...), the EAP Poble Sec, as the person responsible for the treatment, should have made a request to amend the application to the person making the claim, given that they lacked necessary information elements to be able to process it (art. 68 Law 39/2015, of October 1, on the common administrative procedure of public administrations, LPAC).

In short, this Authority considers that this claim for protection of the right to rectification should be considered, given that during the procedure it was proven that the person making the claim exercised the right to rectification that affected the EAP Poble Sec care center, which he did not prove that he has made it effective or that the person claiming has responded, on whether the right has been made effective or on the reasons that prevent it from being made effective.

6. 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, the claimed entity should be required to complete the following actions within 10 days, counting from the day after the notification of this resolution:

- In relation to the five diagnoses dated (...), it is necessary to effect the rectification of the incorrect diagnoses. If the entity has already exercised the exercised right of rectification, it must communicate this to the person making the claim or indicate the specific reasons that prevent the data from being amended.
- In relation to the two diagnoses dated (...), it is necessary to require the claimant to amend his request to exercise the right of rectification, that is to say, to specify the correction that needs to be made with respect to the diagnoses of date (...), and provide the documentation that justifies it.

Once the right of rectification has taken effect in the terms set out, the claimed entity must prove it to the Authority within the next 15 days.

resolution

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...)against EAP Poble Sec, SLP (CAP Les Hortes).
2. Request the EAP Poble Sec, SLP (CAP Les Hortes) so that within 10 days, counting from the day after the notification of this resolution, it makes effective the right of rectification exercised by the person claiming, in the form indicated in the 6th legal basis. Once the right has become effective, within the following 15 days the claimed entity must report it to the Authority .
3. Notify this resolution to the EAP Poble Sec, SLP (CAP Les Hortes) 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, the interested parties may file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after 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