

File identification

Resolution of the rights protection procedure no. PT 14/2023, urged against the Catalan Health Institute (ICS).

Background

1. On 10/02/2023, the Catalan Data Protection Authority received a claim filed on 14/11 / 2022 by Mr. (...) (from now on, the person claiming), for the alleged disregard of the right of access to his personal data, which he had previously exercised before the Catalan Health Institute (ICS).

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

- A copy of the first claim form, generic, submitted to the ICS on 06/21/2022. The person making the claim stated that "on May 21, 2022, the official request was made for the history of (...) from among the data from (...)2004 to 2019", and complained because he had not received a response to his request ("I have no response from you").
- A copy of the response letter, signed by (...) of the Basic Care Area of Balaguer (from now on, ABS of Balaguer), which on 07/06/2022 the ICS addressed to the claimant person. In this letter, the person making the claim is informed of the following circumstance: "since 2014, the center has not had the clinical histories on paper", which "are kept by the private entity (...), subcontracted by the Government of Catalonia." It is also informed about the legal retention periods for the documentation contained in the clinical history: "according to Law 16/2010 of June 3 on the rights of information concerning the patient's health and autonomy, establishes a period of conservation of the most relevant documentation in the history of fifteen years from the date of registration of the care process. (...) The documentation not mentioned in the previous section can be destroyed once 5 years have passed since the registration date of each process. (...)."
- A copy of the second claim form, generic, submitted to the ICS on 07/13/2022. The claimant stated that, on "May 21, 2022", he had requested access to the copy of his medical history "from 2004 onwards" and that, on "July 7, 2022", ICS replied that "the paper history is held by a private company", which is why the person making the claim reiterates that they "give" him his "history".
- A copy of the third, fourth and fifth forms that, on 17/08/2022, 23/09/2022, and 04/10/2022, the claimant submitted to the ICS to reiterate their request for access.

With the transfer of the claim dated 14/11/2022, the GAIP also provided various documentation. Below is transcribed only what has not previously been recorded in the background and which should be taken into consideration when resolving this procedure for the protection of rights:

- A copy of the response letter from the ICS, dated 17/11/2022, signed by (...) of the ABS de Balaguer. In this letter, the person making the claim is informed about the procedures carried out by the CAP de Balaguer and the private company (...), responsible for the custody of the clinical records on paper, to manage the request access of the person claiming. The contact details of the mentioned private company are also provided.
- A copy of the report dated 07/12/2022, through which, among other things, the ICS alleged that the claim that the claimant made before the GAIP on 14/11/2022 has origin in "an ARCO rights request", "**and not a request for public information**", given that the claimant had exercised before the ICS "the right of access to his clinical history."
- A copy of the request to exercise the right of access (medical history request) made by the person claiming before the ICS, on 04/21/2022.
- A copy of the request for transmission of information between health centers, dated 21/04/2022, through which ABS Bordeta-Magraners of the ICS of Lleida requested from CAP Balaguer a copy of the "medical history" of the person making the claim.
- A copy of the request for healthcare documentation made by the claimant before the ICS, on 04/26/2022, for which he requested his "clinical history from 2004 to 2019."
- A copy of the "computerized" clinical history that the ICS gave to the claimant on 07/06/2022, and which includes the following documentation:
 - A copy of the medical report dated 07/06/2022, which contains the claimant's health data from 2009 to 2020.
 - A copy of the schedule of vaccinations administered to the claimant, containing data from 1994 to 2021.
 - A copy of the claimant's analytical tracking sheet, which contains data from 2020 to 2022.
 - A copy of the medical report dated 07/06/2022, which contains the claimant's health data for the years 2001, 2010, 2014 and 2020.
- A copy of the legal report dated 30/01/2023, issued by the APDCAT at the request of the GAIP, in relation to the claim dated 14/11/2022 that the claimant presented to the GAIP, for the alleged neglect of the request for access to his medical history, which he had previously exercised before the ICS. In summary, the Authority concludes the following:

" According to article 24.3 LTC, the resolution of the request for access to the clinical history of the applicant had to be processed in accordance with the RGPD and the eventual claim has been to process before the Catalan Data Protection Authority, competent authority to hear claims in relation to the right of access provided for in article 15 RGPD."

From all the information collected during the hearing process, it is inferred that there is a drafting error regarding the date of the first application for access to the medical history indicated by the claimant in his letter dated 21/06/2022: the person making the claim refers to a request dated 21/05/2022, although it has been established that the request that originated this claim is dated 21/04/2022, and with the letter dated 04/26/2022 the claimant specified that he wanted to access the documentation contained in his medical history from 2004 to 2019.

2. On 03/03/2023, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it considered relevant.

In the same transfer office, the Authority also required the ICS to report whether the claimant had access to the documentation contained in his medical history for the period between 2004 and 2019 and, otherwise, on the reasons or circumstances that prevent you from exercising the right of access in the terms you requested.

3. On 03/22/2023, the ICS requested an extension of the 15-day deadline, which the APDCAT granted.
4. On 07/05/2023, the ICS made allegations through the report issued on 07/04/2023 by (...) of the ICS Citizen Service Area, which stated the following:
 - That "On 21/06/2022, the claim of Mr. (...), in which he requested access to his Clinical History between the periods included from (...) 2004 to 2019."
 - That "Subsequently, on March 22, 2023, a copy of the history was handed to the claimant."

The ICS provided as the only attached document a copy of the response letter dated 03/22/2023. With this letter, the Directorate of Primary Care of the ICS of Lleida states that "the documentation contained in the computerized Primary Care Clinical History (CAP Balaguer and Cap Bordeta) for the period of (...)2004 to (...)2019."

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 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), provides for the following in relation to the right of access of the interested person:

"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 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. 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.
- (...)"

Article 13 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), determines the following 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, provides the following in relation to the protection of the rights provided for by the regulations on personal data protection:

"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. Once the applicable regulatory framework has been set out, it is then necessary to analyze whether the ICS resolved and notified the right of access exercised by the person making the claim within the period provided for by the applicable regulations, since precisely the reason for the complaint that initiated this rights protection procedure was the fact of not having obtained a response within the period provided for this purpose.

In this regard, it is certified that on 21/04/2022 the claimant submitted a request to the ICS, through which he requested access to the copy of his medical history. It has also been proven that, with the letter dated 04/26/2022, the claimant specified that he wanted

the documentation contained in his medical history, from the period spanning from 2004 to 2019.

In accordance with article 12.3 of the RGPD, the ICS had to resolve and notify the request to exercise the requested right within a maximum period of one month, counting from the date of receipt of the request. In relation to the question of the deadline, it should be taken into account that in accordance with article 21.3. b of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), and article 41.7 of Law 26/2010, of August 3, on the legal system and procedure of the public administrations of Catalonia (LRJPCat), the calculation of the maximum term in procedures initiated at the instance of a party (as in this case) starts from the date on which the request was entered in the register of the competent body to process it. On the other hand, the maximum term is for resolving and notifying (art. 21 LPAC), so that before the end of this term it is necessary to have notified the resolution, or at least to be able to prove the notification attempt (art. 40.4 LPAC).

In view of what has been explained, it is proven that the ICS did not respond to the reference request until 07/06/2022, that is to say, when the deadline for resolution had already been exceeded of one month planned for this purpose and once the person claiming reiterated his request, on 06/21/2022. In addition, it should be noted that, on several occasions (specifically, through the writings of 07/13/2022, 08/17/2022, 09/23/2022, and 10/04/2022), the claimant stated before the ICS that the response dated 07/06/2022 was incomplete, given that he had not given him all the documentation contained in his medical history; specifically, it pointed out that the documentation for the period from (...)2004 to 2019 was missing. As stated in the antecedents, the letter of response that the ICS addressed to the claimant in date 11/17/2022 also does not expand the information on this issue.

As part of the hearing procedure of this rights protection procedure, the ICS has certified that on 03/22/2023, and therefore when the Authority had already forwarded this claim, the ICS delivered in hand to the person claiming the documentation contained in their computerized medical history, from the period that covers from (...)2004 to (...)2019. For all this, it must be concluded that the ICS has extemporaneously resolved the claimant's request for access.

4. With regard to the merits of the claim, it has been proven that within the framework of this rights protection procedure, the ICS responded to the claimant and handed him a copy of the documentation contained in his computerized medical history subject of your request for access.

From this response, and given that the claimant has not expressed his disagreement before this Authority, it is inferred that, although extemporaneously, the ICS made effective the right of access exercised by the claimant in the terms of your request.

resolution

For all this, I resolve:

1. Estimate the claim, given that the Catalan Health Institute (ICS) did not respond in time to Mr. (...)’s request. With respect to the substance, no pronouncement should be made or any action required, since the claimant’s right has become effective, albeit extemporaneously.
2. Notify this resolution to the Catalan Institute of Health (ICS) and the person making the claim.
3. 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

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