File identification

Resolution of the rights protection procedure no. PT 20/2023, urged against the Catalan Institute of Health.

Background

1. On 02/21/2023, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right to delete his personal data, which he had previously exercised before the Catalan Institute of Health (hereinafter, ICS).

In particular, the claimant highlighted that his medical history included several diagnoses which he considered incorrect or inaccurate and that, for this reason, on 11/17/2022, he requested their deletion from the ICS. He added that, on 12/27/2022, the ICS denied the deletion of the data through a letter attached to said claim.

In the aforementioned letter, the ICS informed the interested party that it could not delete the data listed in its request for the following reason:

"(...) the specified data cannot be deleted, since the retention time for the same has not expired. Once the retention period for the aforementioned documents has expired, they may be deleted. In addition, these health data that you request to cancel are considered necessary to keep in your Clinical History, according to clinical criteria, to be able to carry out a correct continuity of care .

2. On 03/03/2023, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it deemed relevant. In addition, he was asked to,

"In order to have all the information necessary to resolve the claim, it would be advisable for you, apart from the appropriate allegations, to provide the supporting documentation of the notification to the person making the claim of the resolution of their request, and to inform you about whether you have been given any answer about the alleged inaccuracy of the data collected in your medical history, and in that case you should also provide a copy of said answer, as well as the accreditation of your notification to the interested person If this is not the case, in the statement of objections you can set out the reasons why in said resolution no mention was made of the referenced manifestations of inaccurate data".

3. On 03/20/2023, the claimed entity made allegations by means of a letter in which it set out, in summary, the following:

— That, on 11/17/2022, the claimant submitted a data cancellation request to the ICS to which a response was given on 12/27/2022 stating the reasons for which the request was denied.
— That both the cancellation request and the response from the ICS were provided by the applicant.

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 17 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), regulates the right of deletion in the following terms:

> *"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:*
> *a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
> *b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;*
> *c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;*
> *d) personal data have been treated unlawfully;*
> *e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;*
> *f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.*
> *3. Sections 1 and 2 will not apply when the treatment is necessary:*
> *a) to exercise the right to freedom of expression and information;*
> *b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;*
> *c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;*
> *d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or*
> *e) for the formulation, exercise or defense of claims.*

Article 15 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), determines the following, also in relation to the right of deletion:

> *"1. The right of deletion will be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.*

2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge will be able to retain the identification data of the affected person necessary in order to prevent future treatments for the purposes of direct marketing."

Article 32 of the LOPDGDD regulates the duty to block deleted data in the following terms:

"1. The person responsible for the treatment is obliged to block the data when carrying out the rectification or deletion.
2. The blocking of data consists of the identification and reservation of these, with the adoption of technical and organizational measures, to prevent their treatment, including display, except for making the data available to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the limitation period thereof.
After this period, the data must be destroyed.
3. Blocked data cannot be processed for any purpose other than that indicated in the previous section. (...)"

In relation to the rights contemplated 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 the 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 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 ICS responded to the request for deletion made by the person making the claim, within the period provided for the purpose.

In this regard, it is certified that on 17/11/2022 the entity received a letter from the person claiming through which he exercised the right to delete his personal data.

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 from the date of receipt of the request legality In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of the LPAC and article 41.7 of 7 of Law 26/2010, of August 3, on the legal regime and of procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party (as is the case) begins from the date on which the request have an entry in the register of the competent body for its processing. And, on the other hand, that the maximum term is for resolving and notifying (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least produced the duly accredited notification attempt (art. 40.4 LPAC).

Well, as can be seen from the documentation provided as part of the hearing procedure of this guardianship procedure, it has been established that the ICS responded to the claimant here by means of a letter dated 22/12/ 2022, with an exit registration dated 12/27/2022, which is why he exceeded the one-month period provided for the purpose.

Therefore, in the present case, the claimed entity formally gave an answer to the person making the claim, although exceeding the legally provided term, all this without prejudice to what will be said below about whether or not the answer was complete.

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

Before entering into the analysis of the substance, it is necessary to indicate that the object of the claim made before this Authority was presented against the eventual denial of the exercise of the right of deletion in relation to certain content of the medical history of the person making the claim which, as indicated, would contain "antecedents" that would be "false" or "unjustified".

As a starting point, it should be borne in mind that the right to deletion is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data (Article 18.4 CE).

Article 17 of the RGPD defines the right to deletion as the right of the affected person to obtain from the data controller the deletion of the personal data affecting him if any of the circumstances provided for in article 17.1 of the 'RGPD, and as long as none of the exceptions noted in articles 17.3 and 23 of the RGPD apply.

Well, the claimed entity in its response to the claimant here informed, among other things, about the impossibility of deleting personal data based on the fulfillment of a legal obligation

(art. 17.3. b RGPD), and in relation to this, it stated that *"(...) in accordance with the current regulations, Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation, modified by Law 16/2010, of June 3, we inform you that the specified data cannot be deleted, since the time of conservation of the same has not expired (...)".*

Indeed, as reported by the ICS, the health regulations oblige to keep part of the clinical information for five or fifteen years, or even for a longer period depending on the document in question, counting from the date of the attention received.

Regarding this, article 12.4 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, in its wording given by law 16/ 2010, of June 3, amending Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, establishes, for what is of interest here, the following in relation to the preservation of the clinical history:

*" 4. The following documentation must be kept from the clinical history, together with the identification data of each patient, **for at least fifteen years from the date of discharge of each care process:***
a) The informed consent forms.
b ***) The discharge reports .***
(...).

*6. The documentation that makes up the clinical history not mentioned in section 4 can be destroyed once **five years have passed from the date of registration of each care process** .*

7. Notwithstanding what is established in sections 4 and 6, the documentation that is relevant to care effects, which must incorporate the document of advance wishes, and the documentation that is relevant, especially for epidemiological purposes, research or organization and operation of the National Health System. In the processing of this documentation, the identification of the affected persons must be avoided , unless anonymity is incompatible with the purposes pursued or the patients have given their prior consent, in accordance with current regulations on Protection of personal information. Clinical documentation must also be kept for judicial purposes, in accordance with current regulations.

8. The decision to keep the clinical history, in the terms established by section 7, corresponds to the medical management of the health center, at the proposal of the doctor, with the prior report of the unit in charge of managing the clinical history in each center. This decision corresponds to the doctors themselves when they develop their activity individually ."

Well, having reached this point, there is no question that the entity gave an answer to the person requesting the right of deletion, which conformed to the provisions of the health legislation and indicated a reason why the regulations of data protection allows the deletion of personal data to be denied (Article 17.3. *b* of the RGPD), although it must be considered, however, that the response of the claimed entity is incomplete. And this because, despite the fact that the entity informed in general terms about the legal obligation that prevents clinical data from being deleted, it cannot be ignored that this temporary forecast affects data whose accuracy is not questioned or correction, while in this case the entity did not give any specific response to the deletion of the controversial data, to which the applicant had expressly referred, indicating that it was antecedents that would be "false" or "unjustified".

On the other hand, from the investigative actions carried out by this Authority, no clarifying result has been obtained regarding whether the entity could maintain the validity of the controversial antecedents, beyond that in its response to the interested party indicate that *"(...) these health data that you request to cancel are considered necessary to keep in your Clinical History, according to clinical criteria, to be able to carry out a correct continuity of care",* but avoiding any reference to their veracity or accuracy , and also did not require the interested party to provide information that substantiated his statements about the incorrectness of the data on which the deletion request was based.

In this sense, article 68 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (hereafter LPAC), provides in point 1 that: "If the request for initiation does not meet the requirements indicated in article 66, (...) or others required by the applicable specific legislation, the interested party must be required to, within ten days, repair the lack or attach the mandatory documents (...)". Specifically, article 66.1 of LPAC establishes that the requests that are made must contain, among others, "c) Facts, reasons and request in which the request is specified, with all clarity. (...)".

Well, in this case, it is considered that what belonged to the entity, in the face of the lack of evidence and information on the processing of incorrect data, which would allow giving a concrete answer about the antecedents that the person making the claim pointed out as "false " or "unjustified", was to formally require it to provide the supporting documentation of the indicated inaccuracy, as provided for in article 68 of the LPAC. In view of the result of this action, the entity could already give a complete answer to the request of the interested person or, in the event that once the period granted has passed without providing the supporting documentation for their request, reject the deletion of said antecedents based exclusively on the fact that the legal deadline had not passed.

For all that has been explained, it is considered that the omission of this action by the ICS entails the estimation in part of the claim relating to the denial of the right of deletion, since, although the entity gave a response to the request for the right to deletion regarding any personal data that may appear in the claimant's medical history, the entity's response was incomplete with regard to the express statements of the person requesting about the alleged falsity of the data contained in certain medical records, on which the request for the exercise of the right of deletion was based.

5. In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for protection of rights, the person in charge of the file must be required so that within the term of 10 days to make the exercise of the right effective.

In accordance with this, it is appropriate to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, request the person here claiming the amendment of his request of 17/11/2022, regarding the eventual inaccuracy of the diagnoses or antecedents that he indicated as "false" or "unjustified". And based on the documentation provided, or having exceeded the deadline granted without the interested party justifying the inaccuracy of these data, respond to the person making the claim within the legally provided deadline.

Once an answer has been given, in the terms set out, and the person making the claim has been notified, in the following 10 days the claimed entity must give an account to the Authority.

For all this, I resolve:

1. Declare extemporaneous the resolution of the Catalan Institute of Health, through which it rejected the deletion request made by Mr. (...), for not having responded within the period established in the applicable regulations, in accordance with what has been indicated in the 3rd legal basis.

2. Partially estimate the merits of the guardianship claim made by Mr. (...) against the Catalan Institute of Health, in accordance with what has been indicated in the 4th legal basis.

3. Request the Catalan Institute of Health so that, within 10 days from the day after the notification of this resolution, it makes effective the right of deletion, in the manner indicated in the 5th legal basis , and report it to the Authority.

4. Notify this resolution to the Catalan Health Institute and the person making the claim.

5. 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 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 the LPAC or to directly file an administrative contentious appeal before the administrative contentious courts of Barcelona , in the period 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,