

## File identification

Resolution of the rights protection procedure no. PT 25/2023, urged against Hospital Clínic de Barcelona.

## Background

1. On 06/03/2023, 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 Hospital Clínic de Barcelona (hereinafter, the HCB).

Specifically, the claimant stated that, on 05/24/2022, he submitted a claim for the HCB to delete certain personal data in relation to his clinical history and that said request was dismissed out of time, on 31/01/2023, and without sufficient justification. He adds that the HCB botched the procedure so that they initially sent him a faulty form.

The claimant only provided a copy of the response given to him by the HCB, which is transcribed below:

*"In response to your request, and before your inaccuracy, once all the information has been evaluated and reviewed, we inform you that said request is rejected. The report you are requesting to delete is the result of an emergency service visit and cannot be deleted, so we regret the comments expressed by you towards Dra. (...), and which we consider totally inappropriate and lacking in objectivity".*

2. On 03/13/2023, the claim was transferred to the HCB so that within 15 days it could formulate the allegations it deemed relevant.

3. The HCB made allegations in a letter dated 03/23/2023, in which it set out, in summary, the following:

— That on 05/24/2022, in response to an email message sent by the claimant, he was requested to fill out the corresponding form to exercise the right of deletion.

— That on the same day, the claimant sent said form, but the text could not be read in its entirety, so he was asked, on 05/25/2022, to send it filled in by hand and scanned.

— That on the same day, in response to said email, the claimant complained about the need to send the form again, but did not attach any file, therefore, on 05/30/2022, asked him, again, to send the form, or to come in person to present it.

— That, on 06/13/2022, the person making the claim sent the aforementioned form attached to an email with comments and references "*disparaging and vexatious about health professionals*".

— That the form sent by the claimant stated that he wished to delete the personal data contained in a report dated 10/19/2021 issued by Dra. (...) and that of any other element included in the system that the doctor herself could have written. The claimed entity adds that, in the "reasons for deletion" section of the form, the claimant wrote "*INCOMPETENT. Doctor of dubious training and malpractice, who takes advantage of sick people to play their stupidity in front of their students*", accompanying these terms with a drawing of a clown face.

— That the request "*does not comply with the requirements provided for by article 17 of the General Data Protection Regulation when requesting deletion on the grounds of the optional*

*professional who drafted it, therefore not complying with any of the provisions provided for in the precept, and when encountering disqualifying and vexatious messages towards health professionals (...)* ". For these reasons, it is " *decided to internally analyze in detail the type of response* ". He adds that requests with inappropriate messages " *put at risk the normal functioning of the development of the center's care activity* ". For all this, it was decided to analyze in detail the request as well as the procedure to follow to give an answer to the person making the claim.

— That, once it was considered that, despite all of the above, the person making the claim would be answered, the User Care Area transferred the form to the Psychiatry Service on 01/25/2023, on which gave an answer to the interested person on 01/31/2023.

— That, according to medical criteria, it is considered necessary to maintain the information contained in the emergency reports of patients with psychiatric pathologies, with the aim of allowing adequate treatment and care follow-up. He adds that, even so, they are aware of the special vulnerability of this information, which is why, with the aim of preserving the confidentiality and security of this data as much as possible, these are only accessible by expressly authorized personnel.

— That the claimant was responded to on 01/31/2023 by means of a letter in which it is informed that, " *in view of the inaccuracy and the inappropriate content of the same, according to medical criteria it is considered the need to maintain the information in question, mentioning the disapproval of the disqualifying comments* ".

The claimed entity accompanied its letter with the following documentation:

- Email of 23/05/2022 in which they informed the person claiming that their request had been received and was being transferred to the DPD.
- Email of 25/05/2022 in which they informed the person claiming that the application form was not displayed correctly.
- Email dated 05/30/2022 asking the person making the claim to resubmit the form filled in by hand, as well as the person concerned's complaint response.
- Email dated 06/13/2022 in which the claimant submits the required form.
- Form for exercising the right of deletion, dated 06/13/2022.
- Email addressed to the Psychiatry and Psychology Service of the HCB in which the claimant's request is transferred, dated 01/25/23.
- Response to the person making the claim, dated 31/01/2023.

## **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 circulation thereof ( 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.*

*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:*

*a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or  
b) 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. (...)"*

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 HCB responded to the request for deletion made by the applicant, within the period provided for by the applicable regulations.

In this regard, it is certified that on 05/24/2022 the claimant here sent an email to the HCB in which he asked the entity to delete the personal data from his medical history regarding the report dated 19/10/2021 issued by Dra. (...) and any other element included in the system that the said doctor could have written.

In accordance with article 12.3 of the RGPD, the HCB had to give an answer to the request to exercise the requested right within a maximum period of one month from the date of receipt of the request

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 HCB responded to the claimant here by email - the same means by which it had received the request to exercise rights— on 01/31/2023, i.e., the one-month period provided for in article 12.3 of the RGPD has already expired, despite considering as the date of 'beginning of the calculation of the term, the day 13/06/2022 when the interested person attached the form specifying his request.

Therefore, in the present case, the claimed entity did not formally give a response to the data deletion request of the person making the claim within the legally prescribed period.

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 Specifically, the claimant requested the deletion, from his medical history, of the report dated 10/19/2021 issued by Dr. (...) and any other data entered into the system by the mentioned doctor.

As a starting point, it should be borne in mind that article 17 of the RGPD regulates the right to deletion as the right of the affected person to obtain from the data controller the deletion of the personal data that affect him if any of the circumstances provided for in article 17.1 of the RGPD.

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.

This is why the limitations to this right of deletion must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. Thus, the causes of denial of the right to deletion are regulated in articles 17.3 and 23 of the RGPD. The limitations referred to in article 23 of the RGPD must be provided for *"through measures legislative "* (art. 23.1 RGPD) .

In accordance with the above, 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, from the date of the 'attention received.

Thus, 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 conservation 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.  
(...)
- e) The reports of complementary explorations.  
(...)

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."

In accordance with the above, the request of the person requesting to delete the report dated 19/10/2021 issued by a specific doctor, as well as any other information that the doctor herself could have entered in her medical history, does not comply with the provisions of health legislation, as the minimum time during which it must be kept had not passed. This circumstance must lead to the denial of the deletion of the data requested by the person making the claim.

In accordance with everything that has been set out, the present claim for the protection of the right to deletion must be rejected, with respect to the data of the claimant contained in his clinical history of the HCB with regard to the date report 10/19/2021 issued by Dra. (...), as well as any other information that the doctor herself could have entered into the system.

For all this, I resolve:

1. Declare extemporaneous the resolution of the Hospital Clínic de Barcelona, 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. Dismiss as to the merits the guardianship claim made by Mr. (...) against Hospital Clínic de Barcelona, in accordance with what has been indicated in the 4th legal basis.
3. Notify this resolution to Hospital Clínic de Barcelona and to the person making the claim.
4. 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 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,

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