

Carrer Rosselló, 214, Esc. A, 1st 1st  
08008 Barcelona

ARCHIVE RESOLUTION of the Prior Information no. IP 89/2018, referring to the Vall d'Hebron University Hospital of the Catalan Health Institute.

#### Background

1.- On 19/03/2018 the Authority received a letter in which a person filed a complaint against the Vall d'Hebron University Hospital (hereinafter, HUVH) of the Catalan Health Institute (in hereinafter, ICS), due to an alleged breach of Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD). Specifically, the complainant stated that unauthorized persons had accessed his medical history. In order to substantiate the facts reported, the affected person provided the following documentation:

- a) Document entitled "Relation of unwarranted accesses to the ETC" for the period from 01/01/2015 to 11/30/2016. This list contains several accesses (8) to the medical history of the reporting person (identified during the preliminary information phase) on 29/10/2015 (2), 25/01/2016 (2), 04/02 /2016, 08/04/2016, 04/05/2016 and 02/08/2016, by people with different professional categories and who would provide services in different hospital services, listed as "not authorized".
- b) Office dated 22/12/2016, which the head of the Archives Unit of the HUVH sent to the complainant. In this letter you are informed that it has not been established that the accesses indicated in the previous section "are linked to professional health visits", and that this fact had been brought to the attention of "the Human Resources Unit (or of the unit that it deems appropriate" in order for them to assess whether these facts "may be the subject of a disciplinary offense that motivates the initiation of an information procedure reserved for the personnel who made the accesses".

The content of the documentation provided and the terms of the complaint show that the person making the complaint was a patient of the Oncology Service of the HUVH.

2.- The Authority opened a preliminary information phase (no. IP 89/2018), in accordance with article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC), in order to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant concurrent circumstances.

As part of this information phase, by official letter dated 09/23/2017 the HUVH was required to report on several issues relating to the events reported.

The HUVH responded to the previous request through a letter dated 04/06/2018, which indicated the justification for each of the disputed accesses, in the following terms:

- That, according to the Nursing Directorate, the two accesses of 29/10/2015 and the access of 25/01/2015 were justified to the extent that they were carried out by single professionals with the category of assistant infirmary, which in those days served external consultations at the Oncology Service.

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- That the person who accessed the medical history on 02/04/2016 - a resident doctor who completed her residency in 2017 and who currently provides services at Germans Trias i Pujol Hospital - reports that access it was motivated by the fact that the patient, that same afternoon, he underwent a nuclear medicine study.
- That the person who accessed the medical history on 04/08/2016 - optional specialist in general surgery on voluntary leave since 09/30/2017 - reports that access was motivated by the fact that "the patient was operated on in his unit in January 2014, having previously given his consent for inclusion in a therapeutic study, as stated in the patient's clinical course". The HUVH provided a copy of said informed consent issued by the person reporting here as a patient of an oncological disease.
- That the person who accessed the clinical history on 05/04/2016 - a doctor specializing in medical oncology - reports that "the history was possibly accessed in order to review his case, given that the situation is frequently discussed service patient clinic".
- That the person who accessed the medical history on 08/02/2016 - specialist doctor in Medical Oncology, without a medical link with the hospital since 29/11/2017-, reports that "access occurred on the same day that she was visited at the consultation".
- That "from the area of Human Resources, and after analyzing the answers to the allegations requested and taking into account that there are professionals who no longer provide service at the Vall d'Hebron University Hospital or who are not part of their staff, it was understood that there were not sufficient elements to consider initiating disciplinary actions".

The reported entity provided a copy of the record of access to the medical history of the reporting person from 01/01/2015 to 11/30/2016.

#### Fundamentals of Law

1.- In accordance with the provisions of article 2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, in relation to article 5 of the Law 32/2010, of October 1, of the Catalan Data Protection Authority, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Agency Catalan Data Protection Authority, the director of the Catalan Data Protection Authority is competent to issue this Resolution.

2.- As mentioned above, the person making the complaint complained that several accesses to his medical history would not be justified to the extent that in the access register provided by the HUVH some of them appeared as to "unauthorized" (8 in total, detailed in the antecedents), and that the HUVH itself had sent him a written statement that transferred this circumstance to the Human Resources Unit in order to assess the opportunity to initiate procedure/s 'reserved information. Therefore, it is a matter of elucidating whether the access to the medical history of the person reporting here could be qualified as constituting any of the offenses provided for in the LOPD.

Article 7.3 of the LOPD establishes that data relating to health can only be collected, processed and transferred when, for reasons of general interest, a law or the

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affected person expressly consents. And section 6 of the same precept also enables the processing of this type of data when it is necessary for prevention or medical diagnosis, the provision of health care or medical treatments or the management of health services, always that the data processing is carried out by a healthcare professional subject to professional secrecy or another person subject to an equivalent obligation of secrecy.

For its part, the health legislation, applicable to the case being examined here, provides for the regime of access to the clinical history. Thus, article 11 of the 21/2000, of December 29, on the rights of information concerning the health and autonomy of the patient, and the clinical documentation, determines the following: "Uses of the clinical history

1. The clinical history is an instrument primarily intended to help guarantee adequate assistance to the patient. For this purpose, the care professionals of the center who are involved in the diagnosis or treatment of the patient must have access to the clinical history.

2. Each center must establish the mechanism that makes it possible that, while assistance is provided to a specific patient, the professionals attending to him can, at all times, have access to the corresponding clinical history.

3. The clinical history can be accessed for epidemiological, research or teaching purposes, subject to the provisions of Organic Law 15/1999, of December 13, on the protection of personal data, and the Law of State 14/1986, of April 25, general health, and the corresponding provisions. Access to the clinical history for these purposes obliges the preservation of the patient's personal identification data, separate from those of a clinical care nature, unless the latter has previously given consent.

4. The staff who take care of the administration and management tasks of the health centers can access only the data of the clinical history related to said functions.

5. The personnel in the service of the Health Administration who perform inspection functions, duly accredited, can access the clinical histories, in order to check the quality of the assistance, the fulfillment of the patient's rights or any other obligation of the center in relation to patients or the Health Administration.

6. All staff who use their powers to access any type of clinical history data remain subject to the duty of confidentiality."

In similar terms, the use of clinical history is regulated in article 16 of basic state law 41/2002, of 14 November, regulating patient autonomy and rights and obligations in the field of information and clinical documentation.

Well, as detailed in antecedent 2, the HUVH investigated the accesses that had initially been classified as "unjustified", and based on the information obtained, considered that, given the circumstances and explanations provided by each of the health professionals who accessed the medical history of the complainant here, the initiation of any reserved information did not proceed to understand that the initially dubious accesses were all justified.

Indeed, from the information provided by the HUVH it appears that the professionals who accessed the medical history of the person making the complaint (patient of the Oncology Service of

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said Hospital) they did it for healthcare reasons or with the consent of the affected person, in accordance with the provisions of the health regulations transcribed above, there is no concurrent element that allows this assessment to be distorted.

3.- In accordance with everything that has been set forth in the 2nd legal basis, and since it has not been proven during the present information prior to the existence of rational indications that allow imputing any fact that could be constitutive of any of the infractions provided for in the LOPD, it is necessary to agree on the archive of the present actions.

Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, provides that the filing of the proceedings shall proceed when the following is made clear in the instruction of the procedure "a) The non-existence of the facts that may constitute the infringement".

For all this,

RESOLVED

First.- File the previous information actions number IP 89/2018, relating to the Catalan Institute of Health.

Second.- Notify this Resolution to the Catalan Institute of Health and communicate it to the reporting person.

Third.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://www.apd.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 article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with a discretionary character, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the Courts of Administrative Disputes, within 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 reported entity may file any other appeal it deems appropriate for the defense of its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)