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ARCHIVE RESOLUTION of the Prior Information no. IP 110/2018, referring to the "La Dida" Reception Center of the General Directorate of Child and Adolescent Care.

#### Background

1.- On 4/16/2018, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the "La Dida" Reception Center (hereinafter, Center) dependent on the General Directorate of Care for Children and Adolescents (hereinafter, DGAIA), 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 in January 2018, the Center requested "from the mental health center" - in which she would have been treated - a psychiatric report on her person without her consent and without the existence of a judicial authorization.

2.- The Authority opened a preliminary information phase (no. IP 110/2018), in accordance with article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (henceforth, LPAC), and article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, 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 means of an official letter dated 4/19/2018, the DGAIA was required to report on the facts reported. This request was directed to the DGAIA because, according to information published on the Internet by the Secretary of Children and Adolescence, the "La Dida" Center is considered an "own center" by the DGAIA. The DGAIA responded to the previous request through of writing dated 8/5/2018, which set out, among others, the following:

- That: "(...) from the center several contacts were made with the CSMA of Martorell in order to have elements to evaluate the person (...), who has parental authority suspended with respect to the minor of 'aged admitted to his center."
- That: "However, we are told that the contacts between the centers were made between August and December 2017."
- That: "(...) this General Directorate, as a body competent in matters of child and adolescent protection, as well as all the services, bodies and institutions that integrate and work in the protection system, can obtain, in the exercise of its protective functions, the data necessary to evaluate situations of lack of protection without the consent of the affected holder.

Law 14/2010, of May 27, on rights and opportunities in childhood and adolescence, in article 24, protects the processing of personal data without the consent of the person concerned and determines the duty of collaboration and action between the administrations, and the obligation to provide the information required by DGAIA in order to assess the child's situation, and to carry out the necessary collaborative actions

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to protect them. The data that can be transferred between administrations without the consent of the affected person are: economic, labor, educational, health, police and criminal data of minors and their parents, guardians or custodians.

- That: "Equally, professionals can request "social, medical, psychological, pedagogical or police reports" and assess the "possibilities of care in the own family or extended family" of the child or adolescent, as provides for art.10 of Decree 2/1997, of January 7, which approves the Regulations for the Protection of Destitute Minors and of Adoption, in force in everything that is not opposed to Law 14/2010, of May 27 (DD<sup>a</sup>2<sup>a</sup>Law 14/2010)."
- That: "The DGAIA and the competent technical teams, in order to effectively carry out the protective function of children and adolescents entrusted to them by law, must assess, in terms of technical discretion, the situation of the child or adolescent and their family environment, in all the dimensions that are relevant to determine the existence of situations harmful to their care and the development of their personality, in accordance with the situations of risk and helplessness listed in articles 102 and 105 of the Law 14/2010, of 27 May, on rights and opportunities in childhood and adolescence.

The aforementioned articles include situations of lack of protection in which it is essential to assess the aptitudes and behaviors in relation to the minors of the parents, guardians, guardians, the socio-familial environment or future foster parents (...)."

#### 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.

As a preliminary consideration, it should be noted that at the time of issuing this archive resolution, the precept containing the infringing types that could potentially have been applied to the facts reported (art. 44 LOPD), has been repealed by Royal Decree-Law 5/2018, of 27/7, on urgent measures for the adaptation of Spanish law to the regulations of the European Union in the field of data protection. But since it is about previous facts regarding which the actions of prior information were initiated also before the validity of this rule, it must be governed by the previous regulation (DT 1a RDL 5/2018).

Also, in this act, the eventual application to the present case of what is provided for in Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, regarding the protection of natural persons, has also been taken into account regarding the processing of personal data and the free movement thereof (RGPD). And as a result of this analysis, it is concluded that the eventual application of the RGPD would not alter the legal qualification that is made here.

2.- Based on the account of events that has been presented in the antecedents section, it is necessary to analyze the events reported, that is to say, the collection and processing of personal data of the complainant here for the preparation of 'a psychiatric report, without having their consent.

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First of all, it is necessary to start from the basis that since it is a psychiatric report, the personal data of the complainant here that were the object of collection and treatment would have the consideration of specially protected data, specifically health data, according to the definition provided for in article 5.1.g) of Royal Decree 1720/2007, of December 21, which approves the Regulations for the deployment of the LOPD (hereafter, RLOPD), according to which it is data related to health : "the information concerning the past, present and future health, physical or mental, of an individual. In particular, data related to people's health are considered to refer to their percentage of disability and their genetic information." In accordance with article 7.3 of the LOPD, this type of data "can only be collected, processed and transferred when, for reasons of general interest, a law so provides or the affected party expressly consents."

As has been advanced in the antecedents, the complainant denies having given his consent so that the Center could access and process his health data included in a report issued by the CSMA of Martorell where he was treated. Therefore, in the absence of express consent, it is necessary to analyze, in accordance with article 7.3 of the transcribed LOPD, whether there is a rule with the rank of law that enables the processing of personal data that is the subject of controversy. In this respect, it must be specified that this legal qualification required by art. 7.3 LOPD in the absence of express consent, it must be specific and express, as determined by Sentence no. 70/2009 of the Constitutional Court: "According to consolidated constitutional jurisprudence, the Law must specify the restrictions, moving away from imprecise or extensive delimitation criteria, because the establishment of limits in such a way as to make the right impracticable violates the fundamental right to personal privacy fundamentally affected or ineffective the guarantee granted by the Constitution (STC 292/2000, of November 30, F.11). As we pointed out in STC 49/1999, in relation precisely to the protection of the fundamental right to privacy, the interference in it requires in an "inexcusable" way a legal provision that "must express all and every one of the budgets and conditions of the intervention" (F.4); it must possess what we have on other occasions called a certain "quality of law" (...)."

The "La Dida" Reception Center is a residential service owned by the DGAIA that is equipped with a multidisciplinary technical team (doctor, psychologist, pedagogue and social worker), in accordance with the provisions of articles 30, 35 and 36 of Decree 2/1997, of January 7, which approves the Regulations for the protection of unaccompanied minors and adoption, in force in everything that is not opposed to Law 14/2010, of May 27, of rights and opportunities in childhood and adolescence. Thus, the Center's objective is to observe and diagnose the situation of the minors in foster care and their families, in order to prepare the corresponding measure proposal. It should be noted at this point that children who need immediate attention and who need to be separated from the family nucleus are referred to reception centers.

In the case we are dealing with, and as reported by the DGAIA, the person making the complaint had parental authority suspended in respect of a minor who had been taken care of in the aforementioned Center, for which reason from this entity "several contacts were made with the CSMA de Martorell in order to have elements to evaluate" to the complainant here.

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Law 26/2015, of July 28, amending the child and adolescent protection system, added Article 22 to Organic Law 1/1996, of January 15, on the legal protection of minors four, which allows that, for the fulfillment of the purposes provided for in chapter 1 of title II, that is, actions in situations of social lack of protection for the minor - among which are actions in a situation of risk - the public administrations competent authorities - which includes the DGAIA - may proceed "without the consent of the interested party" to "the collection and processing of data that are necessary to assess the situation of the minor, including both those relating to the minor and those related to the his family or social environment." And for these purposes, it is established that:

"Professionals, public and private entities and, in general, any person must provide public administrations with reports and background information on minors, their parents, guardians, custodians or foster parents that they are required because they are necessary for this purpose; does not need the consent of the person affected."

In addition, with regard to the communication of personal data between the different public administrations (CSMA Martorell and the Centre), it is necessary to invoke, on the one hand, article 24.2 of Law 14/2010, of 27 May, of rights and opportunities in childhood and adolescence, which this transfer allows: "Public administrations must collaborate and act in a coordinated manner. Especially in matters of protection of children and adolescents, public services are obliged to provide the information required by the competent department in matters of protection of children and adolescents in order to assess the situation of the child or adolescent, and carry out the necessary collaborative actions to protect them. The data that can be transferred between administrations without the consent of the affected person are the economic, labor, social, educational, health, police and criminal data of minors and their parents, guardians or custodians. On the other hand, it is also necessary to refer to article 100.3 of the same law, which establishes the obligation to provide information needed to assess the child's situation: "All professionals, especially health professionals, of social and education services, must intervene when they are aware of the situation of risk or helplessness in which a child or adolescent finds himself, in accordance with the specific protocols and in collaboration and coordination with the body of the Generalitat responsible for the protection of children and adolescents. This obligation includes providing the information and documentation needed to assess the situation of the child or adolescent."

In short, on the basis of the aforementioned precepts, it is considered that, in order to fulfill the purposes that the Center - dependent on the DGAIA - was entrusted with, that is to say, for the evaluation of the minor and his family environment, as well as proposing the most appropriate protection measures, the said Center could collect and process the health data of the complainant here - without the need to obtain his consent - since he was one of the parents of the child cared for at the Centre.

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.

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Article 89 of Law 39/2015, in accordance 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: "c) When the proven facts do not manifestly constitute an administrative infraction".

For all this,

RESOLVED

First.- File the previous information actions number IP 110/2018, relating to the "La Dida" Reception Center under the General Directorate of Child and Adolescent Care.

Second.- Notify this Resolution to the General Directorate of Child and Adolescent Care and communicate it to the person making the complaint.

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)