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In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 255/2018, referring to the Catalan Health Service and the Health Consortium (...).

Background

1. On 06/09/2018 the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Catalan Health Service (hereinafter, CatSalut), on the grounds of an alleged breach of data protection regulations.

In particular, the complainant stated that since 2017 he could not access "*LamevaSalut's diagnostic reports*"; that, in response to his claims, CatSalut had told him that it was a malfunction that affected his digital space, and they did not give him any solution. Next, he referred to another request for access referring only to one of those medical reports, which he would have made on 07/02/2018 in person in front of the Residencia Hospital's offices (...), of (...), request from which, as stated, I wouldn't have gotten any answers either. As he stated, he could not access this specific report through the HCCC either.

In order to substantiate the facts reported, he provided copies of two complaint messages that he had sent to CatSalut through the virtual office of citizen procedures (<http://ovt.gencat.cat>, hereinafter, OVT), through which he highlighted the impossibility of accessing his medical reports. Specifically:

- In the message sent on 09/11/2017, the complainant stated the following: "*I would appreciate it if you could tell me why I cannot access many of the reports that exist in Cat@salut La Meva Salut. Because overnight, when I try to access many of the clinical reports, it tells me that the report is currently unavailable. previous days I could access these reports without any problems.*"

And CatSalut's response dated 10/06/2017 was as follows: "*Sir, In accordance with the telephone conversation held, we have generated new credentials for you, sending a new link to your email, and a new PIN to your mobile phone, in order to be able to create a new password. If incidents continue, we recommend you call 061 CatSalut Respon, by your side 24 hours a day, 365 days a year.*"

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- In the message sent on 05/22/2018, the complainant also referred to the impossibility of accessing his entire clinical history, in reference to the shared clinical history in Catalonia (henceforth, HCCC), as follows: *"Since I opened the case, October 2017. I still cannot access my medical history from My Health. This incidence has already been closed and I am still unable to access the clinical reports, in May 2018."*

And CatSalut's response dated 05/28/2018 was as follows: *"Sir (...), In relation to your complaint, we inform you that we have sent it to the territorial area of CatSalut that corresponds to you, the whose data we specify below, where they will manage and respond to the issue you raise. For any query or clarification, you should contact: Regió Sanitària Barcelona Esteve Terrades, 30 - Edifici Mestral 08023 Barcelona Tel. 93 551 57 00 Sincerely, Citizens' Care Management Catalan Health Service Department of Health. And on the same day, CatSalut sent him a second reply message, with which he closed the inquiry: "Sir (...), We refer to the letter addressed to the Virtual Office of Procedures of the Generalitat of Catalonia , we let you know that from the Region Sanitària Barcelona Sud continues to make arrangements in order to give you an answer to the issue you raise."*

2. The Authority opened a preliminary information phase (no. IP 255/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the 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 (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 06/26/2019 the Authority required CatSalut because report, among other issues, on the reasons why the affected person had not been able to access the aforementioned medical reports, and to state whether at the time of making the request for information he was already able to access them and in such a case to certify it, or otherwise point out the actions carried out by CatSalut to solve the problem and set out the reasons that prevented the complainant from accessing it.

4. On 08/02/2019, the TICSalut Social Foundation - data protection delegate of the Department of Health to which CatSalut belongs (hereafter, DPD de Salut) - responded to the aforementioned request through a letter in which stated the following:

- *"That from CatSalut, at the level of data protection, the person has not been contacted, since as reflected in the various attached documents, it did not appear to be a data protection problem (understanding that he was not denied the global access, but in the operation of the LMS)."*

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- *"That in order to verify the facts, his HC of HC3 has been accessed, and it has been possible to observe that he has different reports, the latest ones from emergencies (among them one from (...)). To this end, the test was carried out and it was possible to access the emergency report of (...) dated 07-30-2017.*
- *"That in relation to the causes of non-access, these may derive from the lack of minimum requirements for access to LMS, connection problems, browser, etc. <https://lamevasalut.gencat.cat/web/cps/requisits-minims>."*

5. In order to clarify the answer and assess whether with its action CatSalut had prevented exercising the right of access to the reporting person, on 01/16/2020 CatSalut was again required to report on the following:

5.1. First of all, to explain the specific reasons why, since 2017, the affected person would not have been able to access the diagnostic reports of La Meva Salut (henceforth, LMS), and indicate whether there are currently he could access (including the report he had requested from the Hospital Residencia (...), and in that case he would certify this end). Or, otherwise, to point out what actions CatSalut had taken to solve the problem and what were the reasons that prevented access at present.

5.2. Secondly, in relation to the complaint that the complainant had submitted on 22/05/2018 through the OVT of the Generalitat, he was required to state whether CatSalut (the Health Region of Barcelona, or another body) had finally responded to the complaint submitted, in the sense of addressing the technical or other problem that prevented him from accessing the LMS. And in the case of an affirmative answer, that he provide a copy of the written response and of his notification to the person making the complaint, or otherwise, that he state the reasons why he had not given him an answer.

5.3. In the third and last place, he was required to state whether CatSalut had responded to the request for access that the complainant would have made on 02/07/2018 in person in front of the Hospital Residencia (...), from (...). In the case of an affirmative answer, he was required to provide a copy of the access request, the response letter and its notification to the person making the complaint. And in the case of denial or disregard of the access request, that he set out the reasons that motivated such a decision.

6. Exceeded by far the deadline granted without CatSalut having provided the required documentation, and once the deadline for suspending the administrative deadlines established by DA 3a of Royal Decree 463/2020, of March 14, by which it was declared the state of alarm for the management of the health crisis situation caused by COVID-19, on 06/29/2020, CatSalut was once again required to respond to the Authority's request for information.

7. On 07/06/2020, the DPD of Health submitted a letter to the Authority, in which it stated the following:

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"1.- In relation to the 1st request, CatSalut is conducting the appropriate inquiries in order to provide an answer.

2.- In relation to the 2nd request, CatSalut is conducting the appropriate inquiries in order to provide an answer.

3.- In relation to the 3rd requirement, CatSalut tells us that the actions carried out by Hospital dels (...), are not managed by CatSalut.

In this case, as it is not a case of access to the Shared Clinical History, this Office has contacted as DPD the Health Consortium (...), which has informed us that the reporting person during the In 2018, he submitted up to 7 applications: 1 in January, 1 in February, 2 in May, the referenced one in July, 1 in September and 1 in November. In all requests, the (...) gave due response to them.

Specifically, the request for the month of July, which the complainant would have made on 07/02/2018 in person, in front of the Residencia Hospital (...), of (...), it is related to the request for the preparation of a consultation report that the Head of Service wrote expressly regarding a visit that was made to him.

It is attached as Annex 1. Copy of the request and proof of delivery of the report."

The DPD for Health accompanied its letter with the documentation it mentioned as Annex 1.

8. Following the response from the DPD of the Department of Health regarding the person responsible for the issuance of the Hospital Residencia report (...), the Authority verified that this hospital belongs to the Health Consortium (...), and that on 1/04/2019 the Health Consortium (...) ((...)) was established, which integrates the health resources of the Health Consortium (...) and the Health Consortium of the Alt Penedès. It was also verified that in the Register of Data Protection Delegates (RDPD) it appears that the DPD of (...) is also the TICSalut Social Foundation.

9. On 07/09/2020 he received a final letter from CatSalut, complementary to the previous one, accompanied by an attached document signed by the director of CatSalut's Information Systems Area, in which it was pointed out the next:

"First.

To verify the facts, we entered his HC of HC3, and we were able to observe that he has different reports, the latest from emergencies (among them one from L'Hospital Residencia (...), we have accessed the emergency report from the (...) of 07-30-2017, and we have had no problems,) and from different centers, in addition to the reports for urgent care, it highlights that it has many laboratory results.

Appendix 1 The operation of the LMS does not present any problems, since currently more than 500,000 citizens have accessed the data available on the platform. In relation to the accesses that we can observe from the citizen, we attach the ones he has made recently, but we want to state that since 2017, he has made more than 1200 accesses.

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Annex 2

Second. In relation to the claims that Mr. My Health, we relate the procedures carried out:

(the following information is indicated in a table below)

2017-(...)

OVT (...)-1 Entry 11/09/2017 Problems accessing and viewing documents. Closed with response on 06/10/2017 OVT (...)-2. Entry 25/09/2017. Closed with response on 25/10/2017.

2018-(...)

OVT (...)-3. Entrance 09/10/2017. Derived from RS Metro Sud for management.

OVT (...)-4. Entrance 05/22/2018. Closed with response on 05/28/2018. Acknowledgment of receipt with indication that the procedures continue

Appendix 3

Apart from these claims related to access to My Health (LMS), Mr (...) presented other claims these years for other reasons, both in our Region and in the provider centers (16 in 3 years).

Third

Regarding this point, the Catalan Health Service does not have any information, as it concerns the entity's internal procedures. What can be seen in the annexes, the data prepared by the center are available at the HC3 level."

The attached document also contained the following information, prepared by CatSalut in order to substantiate its response:

- Three screenshots showing the result of a search carried out by CatSalut in the HCCC of the person reporting, which included the documents published in the HCCC from 07/09/2010 to 07/09/2020. The image read the following sentence: "a total of 61 results have been found", of which information was shown on the first twenty-one, among which was the emergency report dated 07/30/ 2017 of the Hospital Residencia (...).
- Annex 2 containing a list of accesses to the complainant's HCCC carried out on 28/07/2017 and 9/03/2020.
- 2 messages issued by the Barcelona Health Region of CatSalut and addressed to the person complainant in response to his complaint, with the following content:
 - 1) CatSalut message issued on 10/25/2017 : "(...) Sir (...), We inform you that a technical problem has been detected affecting your La Meva Salut digital space, which is why you cannot access it. We are in the process of resolving the incident and as soon as possible

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you will receive an email notification when it is back to normal. We regret the inconvenience that the lack of access to La Meva Salut may have caused you."

- 2) CatSalut message issued on 07/07/2020: "(...) Sir, In accordance with the telephone conversation held, we have generated new credentials for you, sending a new link to your email, and a new PIN to mobile phone, in order to be able to create a new password. If incidents continue, we recommend you call 061 CatSalut Respon, by your side 24 hours a day, 365 days a year."

10. Through the Authority's official letter dated 21/09/2020, the complainant was informed about the content of the latest documentation provided by CatSalut, so that he could carry out the demonstrations it considers appropriate.

11. On 09/21/2020, the Authority received a letter of response from the person making the complaint, in which he indicated the following:

"In response to (...) IP 255/2018. Report that the events reported have been necessary for commit other irregularities. With the effects of a request for a Labor Inspection violation, the data protection penalty. And other irregularities in the criminal field. Like a total disregard for public health. I fully reaffirm myself in the facts reported above. And I can prove that these facts, instead of being remedied, have increased. From the moment the complaint was filed, I could see the origins of who was accessing my medical data, how to have access to my reports and diagnoses. At the time of filing the complaint and the subsequent penalty, I could no longer see the accesses to my data. Quite the opposite, I started to see my logins, something that didn't happen before. I can credit countless visits to my CAP, such as the visit to ICAM on 19/12/2018, visits with specialists in recent months. All these accesses I can not see, as in all diagnoses that there is no document attached, to be able to download. And so, I can have public health reports. A fact that great interest has been placed in preventing.

I request: That the facts reported be taken into account. And that the violation by the Catalan Health Service of access to my data. Special protection data. It has not been remedied or corrected, but at least it has continued (...)."

The person making the complaint accompanied his writing with four documents, which contained illustrative screen prints of his consultation carried out on 08/27/2020 and 09/21/2020 at LaMevaSalut, regarding access to his HCCC (s 'observed accesses made on 12/12/2018, 01/03/2019, 03/09/2020 and 07/09/2020) and to their HCDSNS -Digital Clinical History of the National Health System- (in this second case, no access was listed).

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Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

2.1. On the action of CatSalut in the face of the complainant's inability to access the medical reports published in his HCCC.

With regard to the reason for the complaint referring to the alleged disregard by CatSalut of the messages that the person making the complaint sent through the Virtual Office of Procedures (OVT) of the Generalitat, through which he made it clear that he could not to access the medical reports that appeared in his HCCC - accessible through the *La Meva Salut* (LMS) portal - it should be noted, first of all, that by virtue of the principle of anti-formalism, the complainant's messages could well be framed in the exercise of the right of access of the data protection regulations, since the request submitted repeatedly by the complainant was aimed at accessing documents from his HCCC (medical reports) that contained health data relating to the your person, as happens in many cases where users of the public health service request access to their medical records, and these requests are processed as requests

of exercising the right of access in the data protection regulations (not forgetting the right of access to the clinical history provided for in the health regulations).

However, such a consideration should not prevent us from verifying the uniqueness of the present case, both with regard to the channel used by the complainant to formulate his requests (messages through the OVT, instead of submitting the form 'exercise of the right of access to the HCCC of the Department of Health, through the channels provided for), as well as and especially with regard to the content of the complainant's messages (which did not expressly refer to the exercise of the right to access to data protection regulations). And this is relevant in the assessment of the facts reported.

When the reporting person sent the request or complaint messages, Organic Law 15/1999, of December 13, on the protection of personal data (hereafter LOPD), which regulated the right of access, was still in force in article 15 LOPD, and the Development Regulation of the LOPD (RLOPD) provided in article 29.1 that the person in charge of the file had to resolve the access request within a maximum period of one month from the receipt of the request.

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With regard to CatSalut's response to the complainant's requests, the documentation provided to the Authority shows that CatSalut initially responded relatively quickly to the requests made by the complainant on 09/11/2017 and 25/09/2017. In the first response message (sent to the complainant on 6/10/2017, and therefore within the one-month period provided for in art. 29 RGPD), CatSalut generated new LMS access credentials, and in the second response message (sent to the complainant on 25/10/2017, and therefore one month and one day after the end of the aforementioned one-month period) CatSalut admitted the existence of a technical problem that affected the complainant's *LaMevaSalut* digital space, and prevented him from accessing it, and told him that the incident was in the process of being resolved and that he would receive a notice by email when it was back to normal.

Despite the initial speed, the Authority is not aware of the referral to the complainant of this notice of resolution of the technical incident that affected the complainant's digital space, and on 05/22/2018 the complainant sent a new complaint message about the impossibility of accessing the medical reports of his HCCC, a complaint that was closed six days later (on 28/05/2018) without resolving the incident, or at least without giving an answer to the complainant, since the messages from CatSalut actually informed of the referral of the complaint to the competent body for its resolution ("*Regarding your complaint, we inform you that we have sent it to the territorial area of CatSalut that corresponds to you. ...*").

And it was not until the past 07/07/2020 that CatSalut sent the complainant a response message, in which he was informed that, following the telephone conversation that CatSalut had had with the person making the complaint, new credentials had been generated to access the LMS.

In order to assess whether this lack of response or late response from CatSalut could constitute an infringement of the data protection regulations, it should be borne in mind that according to the LOPD it constituted a serious infringement (art. 44.3.e): "*the impediment or obstruction of the exercise of the rights of access, rectification, cancellation and opposition*". It should be noted that with the old LOPD, the mere neglect of the right of access did not constitute, in itself, an infringement, but required that the person responsible for the treatment had prevented or hindered the exercise of the right of access

Well, from the set of responses issued by CatSalut, no intention to prevent or obstruct the complainant's right of access can be inferred, for the reasons indicated below.

Certainly, the technical incident affecting the digital space of the complainant's LMS, prevented access by the complainant to the medical reports of his HCCC for an indeterminate time, but true, because at least on 10/25/2017 CatSalut admitted that it had detected a technical problem affecting the digital space La My Health, and that this was the reason why the complainant could not access it.

However, with regard to the element of culpability of the infringing type provided for in art. 44.3.e) LOPD, it should be noted that this requires the concurrence of willful or culpable conduct - in the sense

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negligent - on the part of the data controller (CatSalut) that leads to preventing or obstructing access to the affected person (the complainant), and this negligence must be inexcusable

With regard to this question, the unique circumstances indicated seem to have conditioned CatSalut's response, aimed exclusively at responding to the technical problem, and ignoring the consequent impact of the messages on the complainant's health data, and consequently also on his right of access. On the other hand, from the content of the messages and the writings of CatSalut it seems to be clear that the main technical problem that would have prevented the complainant from accessing his medical reports for most of the time (apart from the incident noted on 25/09 /2017) would not be attributable to CatSalut, taking into account that in the various letters that CatSalut has presented to the Authority, it has shown that they did not find any impediment to access the complainant's HCCC, nor in the published medical reports, including the report issued by the Hospital Residencia (...). On the other hand, the numerous claims that, according to CatSalut, the complainant would have presented in the last three years (around 16 claims), could have led to some confusion about the reasons and the specific ends object of the complaint and also to what the claimant was provided with a late response.

It is worth noting that the volume of complaints received or the technical incidents noted are not valid reasons to disregard the right of access that a person can exercise to their HCCC data. But it is another thing that this behavior constitutes an infringement, and what has been pointed out so far leads to consider that it is not.

Faced with these considerations, the complainant has stated, in writing dated 09/21/2020, that he persists in the reasons for his complaint, but has focused his complaint on the impossibility of accessing information regarding the accesses made to his HCCC, when this was not the reason for complaint that he presented to CatSalut in the analyzed messages, nor the reasons for complaint that he presented in the written complaint that he presented to the Authority and that motivated the opening of this information prior. For the same reason, the four documents that the reporting person has provided to the Authority together with this last letter, relating to the accesses made to his HCCC and his HCDSNS, are irrelevant to elucidate whether the facts initially reported are constitutive of a breach of data protection regulations, and particularly of the breach provided for in art. the art 44.3.e) LOPD.

It is appropriate to point out what has just been pointed out, namely that in the last letter the complainant also refers to the fact that *"in all diagnoses there is no attached document, to be able to download"*. This statement, however, is not accompanied by any evidentiary document, and, on the contrary, CatSalut has provided a document containing screenshots of the complainant's HCCC, which states that in the period of time between 07/09/ 2010 and 9/07/2020 show "61 results", referring to 61 documents, which include reports and results of medical tests.

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As things stand, the considerations made lead to the conclusion that from the facts assessed in this legal basis it cannot be inferred that CatSalut has prevented or hindered the complainant's right of access to his HCCC or the medical reports it contains.

2.2. On the eventual neglect of the request for access to a medical report issued by the Hospital Residencia (...), of the Health Consortium (...).

Secondly, regarding the alleged neglect of the request for access to a medical report that the complainant made on 07/02/2018 in person in front of the Residencia Hospital (...), of (...), it should be noted that from the facts analyzed it cannot be inferred that the person responsible for the treatment - the Health Consortium of (...) (hereafter, (...))- has committed an infringement of the data protection regulations, which in this case would be the 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 (hereafter, RGPD), fully applicable from 05/25/2018.

With regard to the response of (...) to the complainant's request, the DPD of (...) - on which the Hospital Residencia (...) depends - has submitted to the Authority documentation in which it is stated that they would correspond to that of the person making the complaint, and in the body of the document it is indicated that they would have provided him with a copy of the medical report requested on 26/09/2018, i.e. , almost three months after the complainant had made the request.

In accordance with article 12.3 RGPD, the person in charge must provide the relevant information to the person concerned within one month of receiving the request, which could lead us to question whether with the extemporaneous answer (beyond the most) the (...) would have committed the offense provided for in art. 83.5.b) RGPD, relating to the violation of: "*the rights of the interested parties pursuant to articles 12 to 22*".

However, such an assessment is not necessary, since the documentation provided by the DPD shows that the report that the complainant requested following a visit to the hospital's external consultations area, would have been issued after your request for access. This is evidenced by observing that the complainant submitted on 2/07/2018 his request for a report of the visit he made the same day to external consultations (Clinic XXX), that is to say, that he went alone request a report of a visit he had just made, and therefore, it is clear that the doctor who had just seen him had not yet drawn up the report. Thus, as pointed out by the DPD in the letter it submitted on 07/06/2020 to the Authority, it was not a request for access to a report, but a request for preparation of a report.

So that this request of the complainant cannot fit into the exercise of the right of access provided for in the data protection regulations (art. 12 RGPD), which has as its object

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access to existing data - and related information - and not requests to issue future reports, or data that does not yet exist.

So things are, the considerations made lead to the conclusion that, in relation to the reported events analyzed in this legal basis, CatSalut is not responsible for the treatment referred to the issuance of the medical report of the Hospital Residencia (. ..) (and consequently the sanctioning regime provided for in the RGPD does not fall on him), and with regard to the action of (...), from the facts analyzed it cannot be inferred that this constitutes an infringement.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, should be archived.

resolution

Therefore, I resolve:

1. File the previous information actions number IP 255/2018, relating to the Catalan Health Service, and the Health Consortium (...).
2. Notify this resolution to the Catalan Health Service, the Health Consortium (...) and the reporting person.
3. 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 article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998 , of July 13, governing the contentious administrative jurisdiction.

Likewise, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,