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File identification

Archive resolution of the previous information no. IP 353/2018, referring to the Catalan Health Institute (ICS).

Background

1. On 15/12/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Catalan Institute of Health (hereinafter, ICS), on the grounds of an alleged breach of the regulations on the protection of personal data. Specifically, the complainant complained about unjustified access to his medical history included in ICS files, access which - always according to the complainant - would have occurred in the following context:

- On (...)2018 he went to the center that Laboratorios (...) has in (...) at 8:00 a.m. in order to have a lactose intolerance test performed, the result of the which was provided to him by said laboratory at 12:30 p.m. the same day.
- At 18:09 that same day, he received a call "from telephone 662(...)1", from a person who identified himself as (...) - laboratory technician d'(...)-, who explained to him, in the words of the complainant himself, the following: *"that there was a problem during the performance of the test, and that one of the techniques he gave me the hydrogen measuring device did it without gloves, skipping the protocol. At first I understood that the test had to be repeated (...) after a while, the person asked me if I could go to the laboratory at some point to do some blood tests to check "that everything was good". And I ask him what the blood tests have to do with the lactose test he had done in the morning. Ms. (...) he tells me that "having seen in my doctor's request that I was HIV positive, they have accessed my history from the Catalan Institute of Health, to check the data and that for this reason, if I don't I knew it was serious, and for the peace of mind of the worker who did the test, I stopped by the laboratory to do some analyses."*

2. The Authority opened a preliminary information phase (no. IP 353/2018), 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 18/12/2018 the Catalan Health Service (CatSalut) - entity that manages the HC3 shared medical history - was requested to provide the following documentation and/or information:

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- Copy of the record of access to the medical history (HC3) of the reporting person on (...)2018, which must contain the following information: time of access, user identification and center from which the access was made, as well as the specific resources/records that were accessed.
- In the event that any user was linked to a person attached to the Catalan Health Service, they had to be identified and indicate the reasons that would have justified access to the specific HC3 records of the reporting person.

4. On 28/12/2018, CatSalut responded to the aforementioned request through a letter in which it explained that in relation to the log of accesses to the HC3 of the person reporting, there was no access of the day (...)2018.

5. On 07/01/2019 the ICS was required to comply with the following:

- Provide a copy of the log of access to the medical history of the person reporting here contained in the ICS files, corresponding to (...)2018. This record should contain the following information: time of access, identification and identity of the user, the center from which the access was made, as well as the specific resources/records that were accessed.
- Indicate the reasons that would justify each of the accesses made on that date.

Given the lack of response from the ICS, this request was reiterated on 04/02/2019.

5. By means of a letter dated 02/06/2019, the ICS responded to the previous request, stating the following: *"In relation to the access log contained in the files of the ICS of the reporting person, there is no no access from the day (...)2018. To this end, we attach as Annex 1 a copy of the record for the month in question to expand the information"*.

The ICS accompanied the letter with said copy of the record of access to the medical history of the reporting person contained in the files of the ICS, corresponding to the period between 01/12/2018 and 31/12/ 2018, in which there was no entry on (...)2018.

6. On 02/11/2019, Laboratorio (...), SA was required to provide the following documentation and/or information:

- Bring the testimony of the Laboratory technician (...), identified by the person making the complaint, so that he or she can confirm, deny or specify the statements made by the person making the complaint in relation to possible access by Laboratorios (. ..) in the ICS clinical history file.

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- Indicate whether Laboratorios (...) had access to the clinical history file managed by the ICS, or to the shared clinical history file of Catalonia, managed by the Department of Health of the Generalitat de Catalunya.

7. On 02/19/2019, Laboratorios (...) responded to this request by means of a letter stating the following:

- *"(...) as the affected person says, there was no contact with the professional during the test, but there was contact with the affected person's saliva, which is why the protocol was activated of LABORATORY (...) occupational risk prevention accident, given that the contact was on non-intact skin. The protocol provides that, if the source is known, the patient must be contacted in order to request the performance of an analysis that includes the determinations of hepatitis B, hepatitis C and HIV. This protocol is activated whenever this occurs with the aim of protecting the worker"*
- *"LABORATORY (...) had the information of part of the clinical history of the affected person since the doctor requesting the test included in the request that he was being treated for HIV; (...) this is an independent fact given that without this information the action would have been the same."*
- *"(...) LABORATORY (...) did not access, at any time, the clinical history of the ICS of the affected person (...)"*
- *"(...) LABORATORIES (...) has not had and does not have any type of authorization to access any clinical history of the ICS or the Department of Health of the Generalitat".*

LABORATORIES (...) accompanied the letter of response with a copy of the *"request for referral / clinical interconsultation"* issued by the Outpatient Center of specialties (...), of the Health Consortium (...) (in come in, (...)). This referral sheet states, among other medical information, that the complainant here was receiving HIV antiretroviral treatment.

8. In view of the content of the *"request for referral / clinical interconsultation"* issued by (...), investigative actions were initiated in relation to said entity, which have led to the initiation of a sanctioning procedure.

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 antecedents section, it is necessary to analyze the facts reported, specifically, the existence of unjustified access to the medical history of the reporting person included in files of the 'ICS.

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In the context of this prior information, the ICS reported that its record of access to clinical histories did not record any access on (...)2018 to the clinical history of the person making the complaint. In this regard, the ICS provided a copy of the list of accesses to said medical history in the period between 12/01/2018 and 12/31/2018, a record in which it was possible to observe the absence of any of registration carried out on (...)2018, neither by Laboratories (...) nor by any other person or entity.

On the other hand, CatSalut, as the managing body of the HC3, also informed this Authority that on (...)2018 there was no access to the medical history of the complainant here.

Finally, the Authority made a request to Laboratories (...) in order to provide information regarding possible access to the medical history of the complainant. Well, as explained in the background, the entity explained what circumstances had motivated it that he contacted the person making the complaint by phone on the same day he was going to go for the test, and also provided a copy of the *"request for referral / clinical interconsultation"* carried out by (...) and in the that, indeed, it contained the information relating to the person reporting here was receiving HIV antiretroviral treatment; a circumstance that explained why the professional technician of Laboratories (...) was aware of such a circumstance. Also, Laboratories (...) he denied having *"any type of authorization to access any clinical history of the ICS or the Department of Health of the Generalitat"*.

In short, based on this prior information, it has been established that on (...)2018, the ICS did not improperly access the medical history of the complainant.

3. In accordance with everything that has been set forth in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information, no fact has been proven that could constitute any of the infractions provided for in the applicable legislation, it is necessary to agree on the archiving of these actions.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure: *"The non-existence of the facts that could constitute the infringement"*.

resolution

Therefore, I resolve:

1. Archive the actions of prior information number IP 353/2018, in relation to the Catalan Institute of Health.
2. Notify this resolution to the Catalan Institute of Health and the reporting person.

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3. Order the publication of the resolution on the Authority's website (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 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 the LPAC. They can also directly file an administrative contentious appeal 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, regulating administrative contentious jurisdiction.

Likewise, interested parties can file any other appeal they consider convenient to defend their interests.

The director,