

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

## File identification

Archive resolution of the previous information opened following complaints no. IP 28/2019 and IP 116/2019, referring to the Santa Tecla Health and Social Network

## Background

1. On 28/01/2019 and 08/02/2019 the Authority received, by referral from the Spanish Data Protection Agency, two letters in which two people made single complaints (IP 28/2019 and IP 116/2019, respectively) against the Xarxa Sanitària i Social Santa Tecla (hereinafter, Xarxa Sta.Tecla), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainants - who provide services to the Santa Tecla Health and Social Network - complained that in order to access the corporate intranet, they were required to check a box in advance in which they consent to the processing of their data personal data by the company, in conditions they consider completely "abusive". Specifically, the complaints allude to the need to provide the organization with the telephone number or private email address or, failing that, to commit to accessing your corporate email on a daily basis; so that the company can contact the worker according to the needs of the service.

In order to substantiate the facts reported, the following documentation was provided:

- a) Printout of the intranet access screen, at the end of which an "Accept" button appears.  
According to the whistleblowers, the system only allows you to continue (by clicking this button "Accept") if the box corresponding to "I accept the processing of my personal data" is checked.
- b) Document entitled "Document of information and consent of the worker", in which contains the following literal.

*"We inform you that, on some occasions, when the needs of the service so require, and for the purpose of the correct provision of your professional services, we can send you "sms" messages to your mobile phone with information about your workplace .*

*In the event that you do not wish to authorize the reception of "sms", you must take into account that the eventual needs of the service that must be communicated to you, will be formalized through your corporate email address, being your responsibility to access - there daily in order to be in a position to comply with the instructions that have been addressed to him.*

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

*We inform you that, although you have an email address provided by the organization, you can authorize emails with professional information to be sent to your private email address.*

*In the event that you do not wish to authorize the receipt of e-mails in your private e-mail address, you must take into account that the eventual needs of the service that must be communicated to you, will be formalized through your corporate e-mail address, being his responsibility to access it daily in order to be in a position to comply with the instructions that have been addressed to him".*

2. One of the complainants exercised his right to object to his data being communicated to the reported entity, given his status as an employee of the same.

This request was approved by the Authority through a resolution of 02/15/2019.

3. The Authority opened a preliminary information phase, in accordance with what is provided for in article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (from now on, LPAC), to determine if the facts 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.

4. In this information phase, on 05/22/2019 the reported entity was required to report on the following issues:

- 1 IF, as the complainants claim, every time the employee wants to access the corporate network or intranet, he/she must check the box accepting the processing of personal data.
- 2 Indicate when the worker is shown the document called "*Worker's information and consent document*" (for example, if it is shown every time the worker enters the intranet and prior to accepting the treatment of your data, or only shown the first time you access it, etc.).
- 3 The indicated document makes it clear that, in the event that workers do not provide their mobile phone number or private email address in order to receive "sms" or e-mails for part of the company, they must take into account that "*the needs of the service that must be communicated to you, will be formalized through your corporate email address, being your responsibility to access it daily in order to be in a position to comply with the instructions that have been addressed to him*". In relation to this transcribed section, I report on the following points:
  - d.1) What would be the "instructions" addressed to staff and if these would be common to all staff or, on the contrary, would they be different depending on the professional category/group. A copy of the model or models of instructions provided to staff must be provided.
  - d.2) At what point is the said information provided to each of the workers instructions, and, in particular, at what moment you are informed of the eventual obligation

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

to access the corporate e-mail daily in order to fulfill their duties in the event that they do not provide their telephone number or private e-mail address. As much as possible, you need to credit this end.

- d.3) Confirm that in the event of breaching any instructions addressed to employees by electronic means (either to the mobile phone or private email address provided or to the corporate email) disciplinary responsibilities could be demanded.

5. On 31/05/2019, the Network Sta. Tecla responded to the aforementioned request in writing in which it stated the following:

- That *"Following the entry into force of the new regulations on data protection, and to speed up the process of properly communicating to the workers already incorporated into the entity's workforce the new developments in the matter and the treatment that regarding their data on the part of the entity, it was considered appropriate to make use of the new information and communication technologies to do so causing the least possible inconvenience to the workers already incorporated in the entity through the entry to the corporation's employee portal, not the intranet. This application - employee portal - of the human resources service, serves to consult and download payrolls, communications from the Human Resources Department, etc. In addition, it was used to obtain the express consent of the means of communication they preferred to use, if the corporate mail as recommended by the organization, or, exceptionally, through the personal telephone or personal e-mail (...), consent whose use can be revoked at any time..*

*However, once they have accepted that they have been informed of the treatment, and have consented or not to the use of non-corporate means of communication (e-mail and mobile phone), this dialog box does not appear again, that is to say, only the box appears accepting to have been informed about the processing of personal data on the worker's portal on the first access to this application once the information and consent document was updated for the first time (...)*

*However, in the event that the worker does not accept that he has been informed of the processing of his data (...) the dialog box requesting his acceptance of having been informed will continue to appear and will not allow him to access to this worker's portal if he doesn't, but he can continue doing the same procedures in person at the Human Resources Department (...)"*

- That the *"Worker's information and consent document"* is only shown on paper to new hired staff, a new version of which was made in May 2019 (...) In the case of workers already incorporated and who, consequently, already had a contractual link with the entity, it was signed again digitally as they had been informed because, as explained in the previous point, the document was updated in accordance with the new regulations in the matter (...) Therefore, those already incorporated could download the document when the dialog box appeared when accessing the worker's portal to see what was the treatment of the data carried out by the entity"

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

- That "the instructions addressed to the professionals of the organization are basically informative: new protocols, calls for internal positions, new circuits of requests to the human resources department, activities that may be of interest to the workers, etc. And in any case not common to the entire staff because our entity is made up of Foundations and other entities with well-differentiated social objects, and the staff of each of these members is also differentiated, no mass sending of instructions is carried out to all the workers, nor do we have any model instructions that are provided to the staff because it is not usual in our organization".

- That the means used to communicate the instructions to the workers may vary depending on the and "it of said instruction and the needs of each moment corporate mail (or the staff on the work solely private telephone if so have expressly consented to it for this purpose), but the workplace telephone terminal is also used, or the instruction is given personally" (...) Corporate mail is another communication tool for work matters, so it is the worker's responsibility to consult it with the appropriate frequency (...)"

- That "not consulting the corporate email would not automatically mean the start of a disciplinary procedure".

The reported entity attached various documents to the letter, among others, the document to which they alluded in their letter, which is made available to new hires from May 2019. In this document, which signature is requested at the end of it, the following text is included:

"We inform you that the communications for the correct provision of your professional services will be sent in accordance with the labor regulations and in matters of data protection to your corporate email address, being your responsibility to access it daily with the purpose to be in a position to comply with the instructions that have been addressed to him. As exceptional situations, if Vè. if you want to receive communications in your personal email and/or private phone number, indicate below the email address and/or phone number where you want the communications to be sent"

#### 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.

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

The complainants complained that in order to access the corporate intranet, they were required to check a box in advance in which they consent to the processing of their personal data by the company, under conditions that they consider completely "abusive".

Specifically, the complaints allude to the need to provide the organization with the telephone number or private email address or, failing that, to commit to accessing your corporate email on a daily basis; so that the company can contact the worker according to the needs of the service.

Article 6.1.a) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (henceforth, RGPD), regarding the lawfulness of the treatment, states that the treatment will only be lawful if at least one of the following conditions is met:

- "a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;*
  - b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application of the request of these pre-contractual measures;*
  - c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;*
  - d) the treatment is necessary to protect the vital interests of the interested party or another natural person;*
  - e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;*
  - f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.*
- The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions."*

In accordance with the previous precept, it is considered that in the case analyzed here, the processing of the data (e-mail and private mobile phone) of working people would be lawful, since it would be part of a processing that would be necessary for the execution of a contract, in this case, an employment contract between the Network and the staff at its service. In addition, in the case we are dealing with, the singularity of the field in which this employment relationship is framed - the health field - is of particular importance, in which no one escapes the fact that it is common establishment of unique shifts and working days - which do not correspond to those usually provided for in other areas with fixed working hours from Monday to Friday - precisely because of the service they provide to the population and which demands uninterrupted attention. And that's why

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

it is completely justified that, for reasons of the provision of the service, the organization may find it necessary to contact the worker in an agile way.

Apart from the above, it should also be noted that the Network does not oblige working people to give their mobile phone number or private email to the organization, as it gives an alternative if they do not want to do so: consult corporate email. Neither does the Network does not oblige the working person to consult their corporate e-mail every day, since they can avoid this by providing their contact details to the company, apart from not doing this either entails, according to the Network, the initiation of a disciplinary procedure nor does it prevent access to the intranet and the rest of the organization's applications, or any other resource of the company. In short, that the Network's claim does not it is different than having a direct and fast way of contact with the working person in order to be able to contact them in case the needs of the service justify it, claim, as has been said, perfectly understandable and justified given the area where the organization provides service, and which would be framed in the execution of a contractual relationship.

Having said that, we cannot fail to note that in an organization like the Network, different professional profiles work - from medical staff to administrative or junior staff - who, in turn, can provide service in work centers that may potentially have needs of different personnel. Thus, for example, the need to contact the professional for reasons of service will not be the same, in the case of medical staff who provide services in a hospital, as in the case of an administrative assistant who provides services in the offices of the central services. And it is probably this lack of differentiation that has led to the confusion of some of the people who work on the Network who, like the complainants here, have considered "abusive" the treatment of their data by the organization. So, taking into account

the observations that have been made at this point, it would be highly recommended that the Network, when requesting the particular telephone or email address of the working people in order to contact them for service needs, particularize the message depending on the professional profile to which it is addressed, clearly informing whether, in accordance with the profile in question, the working person will have the obligation to consult his corporate e-mail in case of not providing his data (telephone and e-mail particular), and with what temporal periodicity it will have to do so.

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 infractions provided for in the applicable legislation, should be archived.  
resolution

Therefore, I resolve:

1. File the actions carried out in the previous open information following complaints number IP 28/2019 and IP 226/2019, in relation to the Santa Tecla Health Network.

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

2. Notify this resolution to the Santa Tecla Health Network and to the complainants.
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, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,