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

File identification

Archive resolution of the previous information no. IP 79/2019, referring to the Hospital (...)

Background

1. On 03/14/2019, the director of the Catalan Data Protection Authority issued a resolution within the framework of rights protection procedure no. PT (...)/2018, following the claim presented by Ms. (...) (hereinafter, claimant), against the Hospital Consortium (...) (hereinafter, the Hospital). In the second point of the dispositive part of the resolution, the following was pointed out:

"Second.- Open a preliminary information phase for the purpose of elucidating whether the Hospital Consortium (...) has committed an infringement of the data protection regulations for having removed the documentation (...)clinical-labor requested by the claimant before the applicable retention period has expired."

Regarding the information that the claimant requested from the Hospital, in the rights protection procedure, the Hospital stated in a letter dated 02/12/2019 that the claimant: *"on the 27 of September 2017 she went to (...) to request a list of the occupational accidents she had suffered as a worker of (...) and a copy of her history (...) from Occupational Health At that time, prior to acknowledgment of receipt, the requested documentation is delivered. Once the documentation that was given to Ms. (...) he stated that he missed the clinical course (...) of an accident he had suffered on March 27, 2007."* And in this regard, the Hospital pointed out the following:

"(...) the (...) has evidence that she suffered that accident, because there is an investigation into it and it is known that the worker was on leave due to a professional contingency from 04/02/2007 until the 04/12/2007.
The reason for the referred leave was an accident for which she was attended to in the emergency room, for which reason a copy of the report was requested from the Emergency Service of (...).

The request was answered by the Emergency Service in the sense that, in accordance with current legislation, emergency reports are destroyed after 5 years, since it is not a question of any of the documents that Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation (...), obliges to keep for 15 years (...)."

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2. The Authority opened a preliminary information phase (no. IP 79/2019), 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 07/05/2019 the Hospital was required because, among of other issues, he confirmed that he had destroyed the medical report dated 04/02/2007 issued by the Hospital's Emergency Service, and explained the reasons and the rule that in his opinion justified its deletion; also to point out the information that the Hospital communicated to the occupational accident mutual regarding the occupational accident suffered by the claimant on 03/27/2007. And the last one was asked to provide a copy of the documentation he had regarding the assistance provided by the Emergency Service to the claimant as a result of the work accident, and in particular the information about the occupational accident that appeared both in his clinical-occupational history (...) and in his general medical history(...) .

4. On 07/22/2019, the Hospital responded to the aforementioned request through a letter in which it stated the following:

"As for the information that can be found in the clinical-labor history (...) of Mrs. (...) regarding the accident suffered on 03/27/2007, as indicated, no information is included.
It is only stated in her file as a worker that she was on leave due to professional contingency from 04/02/2007 to 04/12/2007, which we do not know if it is related to the accident of 03/27/ 2007, but there is no information in his occupational health record.

As for the information that can be found in the general medical history (...) there is also no emergency care on 03/27/2007, only a visit to the emergency room on 04/02/2007, due to low back pain , without the existence of any type of additional information or report that would allow it to be associated with the accident suffered on 03/27/2007.
(...)
Until 2010, the reports issued by the Emergency Service were not computerized, and were issued on paper, which were destroyed once the legal retention period of 5 years had passed. This fact leads us to conclude that the report issued on March 27, 2007 was already destroyed.

(...)
The retention periods of the documents that make up the clinical history(...) in Catalonia are established by Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation (...).
In this sense, and considering that until 2010 emergency documents were not computerized, it was interpreted that in accordance with article 12 of Law 21/2000, they had to

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keep for 5 years, since according to the sixth section all documents that are not expressly mentioned in the fourth point of article 12, must be kept for 5 years.
In this sense, the (...) would like to mention the special singularity of the emergency report as an assistance report that includes the reason for consultation, the medical history, the examination, the complementary examinations, the diagnosis, treatment, destination of the patient, time of entry and exit, and that has a different configuration and function than the discharge report.
Likewise, the very high volume of emergency services in (...) made it impossible to keep the information for longer than the legally established period, that is to say 5 years.
However, this part wants to highlight that since 2010 all emergency reports have been computerized, which is why the 5-year retention period no longer applies.
(...)
On the date of the accident of Mrs. (...), no type of data was communicated to the Mutuals, since the occupational health service was provided entirely by the Hospital itself (...), therefore we can affirm that no type of documentation was sent to none Mutual
(...)
As we indicated in the first allegation, in the general medical history (...) of Ms. (...), no type of assistance is listed on 27/03/2007, the first assistance recorded is that of 02/04/2007, and it is only recorded that she was visited in the emergency room for lower back pain.
Therefore the Hospital (...) cannot provide any kind of documentation in this regard.
(...)
At this point, we want to highlight again that the Hospital (...) has computerized emergency documents since 2010, so from that year any document issued to the emergency department is kept indefinitely, disappearing from the indicated date the limitation of conservation of emergency documents (...)."

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 facts that motivated the opening of the previous information.

This preliminary information was initiated following the processing of rights protection procedure no. PT (...)/2018, considering this Authority that the Hospital could have eliminated the clinical-labor documentation (...) requested by the person there claiming before the retention period that could be applicable.

2.1. Preliminary considerations.

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In advance, it is appropriate to make two considerations on the basis of which the facts have been analysed.

First of all, it should be noted that the considerations made here are not limited to the medical report that was issued by the Hospital's Emergency Service on 04/02/2007, in accordance with the · request and subsequent claim made by the person making the claim before the Authority. In this regard, it should be remembered that the claimant initially requested a copy of her occupational health clinical history (...), and then and in particular, a copy of the clinical course(...) corresponding to the work accident suffered on 03/27/2007.

Secondly, it should also be taken into account that, as stated by the Hospital in writing submitted on 07/22/2019, on the date the claimant suffered the accident at work, the Hospital provided the full service of occupational health of its workers, and as far as it is concerned now, it managed the health care included in the protection of the contingencies of work accidents and occupational diseases of the Social Security, as provided for in article 102.1.a) of the Royal Legislative Decree 8/2015, of 30 October, approving the revised text of the General Social Security Law of Social Security (hereafter, LGSS). This, apart from the activities of prevention of the same contingencies that can be framed in the obligations that the Hospital has - as an employer - towards its workers, derived from the regulations on the prevention of occupational risks.

Based on these premises, the response made by the Hospital will be analyzed in the framework of the previous information.

2.2. On the retention regime of the claimant's health data related to the work accident of 03/27/2007 and on the emergency report of 04/02/2007.

With regard to the legal retention period for the Emergency report, the Hospital pointed out that the assumption provided for in article 12.6 of Law 21/2000, which establishes a retention period of five years for that documentation that is not expressly mentioned in section 4 of the same precept.

While it is true that, with regard to the medical history conservation regime (...) provided for in article 12 of Law 21/2000 (according to its wording after 06/10/2010), the emergency report is not among the documentation mentioned in section 4, to assess in the present case its need for conservation, it is also necessary to take into account what is provided for in section 12 of the same precept, which establishes that: *" The prescriptions of this article are understood without prejudice to the application of the specific regulations for the prevention of occupational risks and the protection of the health of workers in the clinical histories relating to the monitoring of the health of workers."*

With regard to the conservation of the documentation relating to the health of the workers that the employer collects on occasion or for the fulfillment of its obligations in the matter of

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prevention of occupational risks, Law 31/1995, of November 8, on the prevention of occupational risks (hereafter LPRL) establishes the following in article 23:

"1. The employer must prepare and keep at the disposal of the labor authority the following documentation relating to the obligations established in the previous articles:

a) Occupational risk prevention plan, in accordance with the provisions of paragraph 1 of article 16 of this Law.
b) Assessment of the risks for safety and health at work, including the result of the periodic controls of the working conditions and the activity of the workers, in accordance with the provisions of paragraph a) of the section 2 of article 16 of this law.
c) Planning of the preventive activity, including the protection and prevention measures to be adopted and, where appropriate, protective material to be used, in accordance with paragraph b) of section 2 of article 16 of this Law.
d) Practice of the checks on the state of health of the workers provided for in article 22 of this Law and conclusions obtained from them in the terms collected in the last paragraph of section 4 of the said article.
e) List of work accidents and occupational diseases that have caused the worker to be unable to work for more than one working day. In these cases, the employer will also make the notification referred to in section 3 of this article.

2. At the time of cessation of their activity, companies must send the documentation indicated in the previous section to the labor authority.

3. The employer is obliged to notify the labor authority in writing of the damage to the health of the workers in his service that had occurred due to the development of his work, in accordance with the procedure that is determined by regulation .

4. The documentation referred to in this article must also be made available to the health authorities so that they can comply with the provisions of article 10 of this Law and article 21 of Law 14 / 1986, of April 25, general health."

Article 16.2 LRPL, to which article 23.1.b LPRL refers, establishes the following:

"2. The essential instruments for the management and application of the risk prevention plan, which can be carried out in phases in a programmed manner, are the assessment of occupational risks and the planning of the preventive activity referred to in the following paragraphs :

a) The employer must carry out an initial assessment of the risks for the safety and health of the workers, taking into account, in general, the nature of the activity, the characteristics of the existing workplaces and the workers who have to exercise them. The same evaluation must be done on the occasion of the choice of work equipment, substances or

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chemical preparations and workplace conditioning. The initial assessment will take into account those other actions that must be carried out in accordance with the provisions of the regulations on the protection of specific risks and particularly dangerous activities.
The assessment will be updated when the working conditions change and, in any case, it must be submitted to consideration and will be revised, if necessary, on the occasion of the health damage that has occurred (...) ."

Regarding the notification obligation provided for in article 23.3 LPRL, Order TAS / 2926/2002, of November 19, which establishes new models for the notification of work accidents and makes it possible its transmission by electronic procedure, contains in an annex the work accident notification model, which contains a 4th section, referring to the work accident, in which it is necessary to record, among other information, the reference to how the affected person was injured; and a 5th section, referring to healthcare data, in which it is necessary to record, among other things information, the degree of the injury, a description of it and the injured body part.

On the other hand, article 37.1.e) of Royal Decree 39/1997, of January 17, which approves the Regulation of prevention services, establishes that they are functions of a higher level in the assessment of risks and the development of the preventive activity: *"e) The monitoring and control of the health of the workers in the terms indicated in section 3 of this article".* And this 3rd section provides, among others, the following:

"c) (...) The health examinations must include, in any case, a clinical-work history (...), in which in addition to the anamnesis data, clinical examination (...) and control biological and complementary studies depending on the risks inherent in the job, a detailed description of the workplace, the time spent there, the risks detected in the analysis of the working conditions, and the prevention measures will be recorded adopted (…)."

It follows from the regulations set forth that the Hospital was obliged to keep the claimant's health data referred to and generated as a result of the work accident he suffered on 03/27/2007, since that data was necessary to fulfill the their obligations in terms of occupational risk prevention. Indeed, the conservation of this data was
necessary for the Hospital to assess the damage caused and to prevent new risks to the safety and health of the claimant; its conservation was also necessary to be able to carry out the periodic health examinations of this person correctly; likewise, its preservation was necessary to be able to inform the labor authority and the health authority, when they require it or require it, about the accident at work and the leave due to professional contingency of the claimant.

In particular, so that the Hospital could comply with the obligations derived from the direct management of the professional contingencies of its workers, it should have kept this information mainly in the clinical-work history (...) of the claimant , since this provides the optional person who periodically carries out the worker's health examination, the information regarding their health in relation to their workplace, which

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it would include monitoring the evolution of an injury caused in a work accident, as appears to be the case here. On the other hand, the Hospital's Occupational Risk Prevention Service should have kept that information about the work accident suffered on 03/27/2007, which was
necessary to assess and prevent occupational risks linked to the claimant and his workplace, in the terms and with the limits indicated by the occupational risk prevention regulations.

With regard to the retention period of these health data, although the indicated regulations do not specify it, the fact that the employer's obligations indicated must be fulfilled while the employment relationship remains in force (and in certain cases even after it has been terminated), leads to the conclusion that this health data of the claimant should have been maintained for the duration of his employment relationship with the Hospital, in order to guarantee
their right to health. Precisely the reason for complaint that the claimant expressed in the letter of complaint that she presented to the Authority about the problems caused by the omission of this information before the Mutual - probably alluding to the impossibility of linking the circumstances current health records with the damages, not registered, produced as a result of that work accident suffered more than ten years earlier -, highlight the need to preserve that information while the employment relationship is maintained.

To the last, it is not superfluous to add merely by way of illustration that, at the very least, part of the deleted information should be stored in the archives of the Ministry of Labour, Migration and Social Security, to be the Administration competent in the management of the electronic transmission system of work accident notifications. In any case, it should be noted that the eventual conservation of data by other responsible persons would not exempt the Hospital from fulfilling its obligations to conserve this data.

2.3. Classification as a serious infringement of the facts analyzed.

In accordance with the above, the elimination of the claimant's health data generated as a result of the work accident he suffered on 03/27/2007, including the health data that appeared in the report issued in date 04/02/2007 by the Hospital's Emergency Service, would constitute the violation provided for in article 44.3.d) of Organic Law 15/1999, of December 13, on the protection of personal data (henceforth, LOPD), in force at the time the removal of the information took place, which qualified as a serious infraction:

"Treat personal data or use it subsequently in violation of the principles and guarantees established by this Law or in breach of the protection precepts imposed by the regulatory provisions of deployment, when it does not constitute a very serious infringement".

Article 4 LOPD to which the transcribed precept refers, regulated the principle of data quality, establishing the following:

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"1. Personal data can only be collected to be processed, as well as subjected to this processing, when they are adequate, relevant and not excessive in relation to the scope and the determined, explicit and legitimate purposes for which they are have obtained
(...)
5. Personal data must be deleted when they are no longer necessary or relevant for the purpose for which they were collected or registered.
(...)
6. Personal data must be stored in a way that allows the exercise of the right of access, unless they are legally cancelled.
(...)".

From the provisions of article 4.5 LOPD, on the contrary, it follows that the processed data must be kept - and therefore not deleted - as long as they are necessary to fulfill the intended purposes. Among these purposes pursued by the Hospital with the treatment of the claimant's health data - due to her status as an employee of the entity - was the management of the professional contingencies of its workers, and that of risk prevention labor

2.4. Prescription of the infringement.

Despite what was pointed out in the previous heading, article 47.1 LOPD (...) established that serious infringements, as is the case of the infringement pointed out, prescribed 2 years after their commission. In the present case, the exact date on which the Hospital deleted the claimant's health data that it collected following the work accident he suffered on 03/27/2007 is unknown, except for the report of 'Emergencies, regarding which the Hospital indicated that it eliminated it once the five-year term had passed, and it is what will be taken into consideration. Given that this report was issued on 2/04/2007, it must be understood that it was deleted in 2012, and in any case what is certain is that when the claimant applied to the Hospital on 27 /09/2017 his clinical-labor history (...), the report, according to the Hospital itself, had already been destroyed So, the serious infringement pointed out would have prescribed in the year 2014, and ultimately in September 2019, a reason that prevents the initiation of a sanctioning procedure.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that the facts that give rise to this prior information would have prescribed, it is appropriate to agree to its archive.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 79/2019, relating to the Hospital Consortium (...).

2. Notify this resolution to the Hospital Consortium (...) and the person making the complaint.

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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,