

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

File identification

Archive resolution of the previous information no. IP 198/2019, referring to the Hospital Clínic de Barcelona.

Background

1. On 18/06/2019 the Hospital Clínic de Barcelona (hereinafter, HCB) notified the Catalan Data Protection Authority of a security breach (NVS 33/2019). Specifically, the notification stated that on 04/06/2019 it became known, through the Police of the Generalitat-Mossos d'Esquadra (hereafter, PG-ME), that various documentation of patients from the HCB had been found abandoned in another hospital. The HCB added that the PG-ME had informed them that this documentation had been abandoned by a patient, whom he did not identify.

As indicated by the HCB in the notification, the information that was found in another hospital consisted of several provisional reports and other non-final documents of patients treated in the HCB's Psychiatry Emergency Service, for which reason it was inferred that it was documentation to be destroyed from the psychiatric emergency area and, specifically, that which was stored in the medical office of the psychiatric emergency area on the 6th floor of the HCB, as a preliminary step to its final destruction.

2. The Authority opened a preliminary information phase (no. IP 198/2019), 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 03/03/2020 the HCB was required to report, among others, on whether in the office of the medical professionals on the 6th psychiatry emergency floor there is still stored documentation that had to be destroyed later; as well as if more document destruction containers were acquired following the security incident.

This requirement will be reiterated on 06/17/2020.

4. On 06/25/2020, the HCB responded to the aforementioned request through a letter in which it stated, among others, the following:

- That measures were taken in the Emergency Service so that documents could not be stored in the doctor's office or in the nursing control.

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

- That 2 confidential destruction containers were requested for the 6th floor (1 on the psychiatry area and 1 in the pre-admission area).
- That a confidential document destruction container was placed inside the doctor's office to ensure the security of all patients' data [it is inferred that the one requested for the psychiatry area].
- That on the part of the nursing coordination, the need to close the control doors was remembered to prevent any patient from entering the nursing control and the medical office.
- That the circuit for the confidential destruction of documents is published on the intranet.

The HCB attached various documentation to the letter to prove the placement of the document destruction containers.

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.

In advance, it should be noted that this Authority opened a preliminary information phase following the aforementioned security breach, in order to investigate whether, after the aforementioned security incident, technical and organizational measures were implemented to guarantee a level of security appropriate to the risk.

In the present case, the HCB had not implemented adequate measures to ensure the security of the paper documentation that was stored in a bag inside the medical office of the psychiatric emergency area on the 6th floor of the HCB, as a step before its definitive destruction. In this sense, in the notification of the security breach, the HCB indicated that it had initially been considered that, for reasons of space, it was not possible to locate a confidential information destruction container in the psychiatric emergency care area. Given the above, the HCB stated that once each shift ended, all the paper documentation that had to be destroyed was moved to the confidential information destruction container that was located on the 3rd emergency floor. The HCB asserted that during the shift, the documentation to be destroyed was left in the doctors' office on the 6th floor of the emergency area, which had restricted access and was always closed.

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

Well, in the present case it is inferred that an unauthorized third person was able to access the medical office of the 6th emergency floor of the HCB. In this sense, even though it is an outbuilding with restricted access, it is inferred that when the notified security incident occurred the door was not closed, so that the person who took the documentation bag

In turn, it should be noted that storing documentation subject to destruction in plastic bags does not seem like an adequate measure to guarantee the security of the data, since this would not prevent access to the information it contains, nor its subsequent recovery.

However, it is necessary to highlight the action of the HCB following the security incident that was notified to this Authority. Indeed, after having evidence of said incident, the HCB located a document destruction container in the medical office on the 6th floor of the emergency area, where this documentation was previously stored in plastic bags. In turn, his employees were reminded of the need to close the control doors to prevent any patient from entering the nursing control and the medical office.

Therefore, it must be concluded that the measures adopted by the HCB rule out that the reported security incident can be reproduced.

Having said that, in the Guidelines on the notification of the breach of the security of personal data according to the RGPD approved on 03/10/2017 and revised on 06/02/2018, the Article 29 Working Group stated that following a security breach, on the one hand, the control authority can also impose sanctions for not having notified or communicated the breach to the control authority or to those affected when appropriate (articles 33 and 34); and on the other, due to the absence of adequate security measures (article 32).

In the present case, it is necessary to take into account the measures implemented by the HCB following the incident to avoid the risks inherent in the destruction of paper documentation, and especially that this Authority has become aware of the facts following the notification made by the HCB, lead to discard the initiation of a sanctioning procedure and agree to the archive of the present actions of prior information.

resolution

Therefore, I resolve:

1. Archive the actions of prior information number IP 198/2019, relating to the Hospital Clínic de Barcelona.
2. Notify this resolution to the HCB.

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

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 HCB can file, on an optional basis, 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 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 HCB may file any other appeal it deems appropriate to defend its interests.

The director,