

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

## File identification

Archive resolution of the previous information no. IP 257/2019, referring to the Catalan Health Institute.

## Background

1. On 09/27/2019, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Catalan Institute of Health (hereinafter, ICS), on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the complainant (identified during the preliminary information phase), complained that a person who provided services to the ICS, who he identified in his writing with first and last name, had unjustifiably accessed the medical history of his mother. The complainant based his complaint on the content of a message that this person would have sent him via WhatsApp in which he mentioned his mother's health information.

Specifically, the content of the message, which copy was provided, was the following: *"tomate las pastillas de tu madre q te hacen falta guapa"*.

2. The Authority opened a preliminary information phase (no. IP 257/2019), 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 14/10/2019 the ICS was required to report whether Ms. (...), identified by the complainant, provided services to the ICS; and, if so, comply with the following:

- Indicate the professional profile of Ms. (...), as well as the center in which he had served in the last year.
- Provide the record of access to the medical history of the mother of the person reporting in the period between 27/09/2018 to 27/09/2019 -both included-.
- In the event that the aforementioned register contained accesses made by Ms. (...), indicate the reasons that would justify each of them.

4. On 06/11/2019, the ICS responded to the aforementioned request, providing a copy of the record of access to the disputed clinical history during the indicated period. Likewise, in its letter the ICS stated the following:

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- That Ms. (...) has provided services to the ICS, with the professional profile of administrative assistant, in two centers of this entity, one of them the EAP (...)
- That the record of access to the clinical history does not record any access made by it professional

It is verified that, in accordance with the explanations of the ICS, the access register provided by this entity contains several accesses carried out by staff of the EAP (...) (centre of which the holder of the clinical history)-, but none of them carried out by Ms. (...).

#### 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.

As stated, the complainant complained that Ms. (...), who provides services to the ICS, would have improperly accessed his mother's medical history. And he based his complaint on the content of a WhatsApp message that Ms. (...) would have sent the complainant here, in which he mentioned health data relating to his mother.

Well, as explained in the background, the ICS has informed this Authority that Ms. (...) had not accessed in the required period (from 27/09/2018 to 27/09/2019) the medical history of the mother of the complainant here, a fact that this entity proved by providing a copy of the register of 'accesses in which, in fact, there is no access made by Ms. (...).

Certainly, the content of the WhatsApp message that Ms (...) would have sent to the person making the complaint here contained health information about her mother (specifically, that she takes pills), but given the characteristics of the information - not very specific and absolutely generic-, there is nothing to suggest that this must necessarily come from the clinical history kept by the ICS, therefore other informal sources cannot be ruled out as the origin of the information; or even if it does not come from any source and the comment in question simply responds to a gratuitous statement made by Ms. (...), since it is common for older people to take some form of mediation.

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So things are, and with regard to the ICS, the right to the presumption of innocence enshrined in article 24.2 of the Spanish Constitution, and article 53.2.b) of the LPAC applies here, which determines that *"The sanctioning procedures must respect the presumption of non-existence of administrative responsibility until the contrary is proven"*.

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. Archive the actions of prior information number IP 257/2019, relating to the Catalan Institute of Health.
2. Notify this resolution to the Catalan Institute of Health 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 February 20, by which the Statute of the Catalan Data Protection Agency is approved, the interested persons can file, with discretion, 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 the provisions 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,