

Carrer Rosselló, 214, esc. A, 1st 1st
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File identification

Archive resolution of the previous information no. IP 264/2019, referring to the Catalan Health Institute.

Background

1. On 01/10/2019, 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 Mrs. (...) - who had provided services at the Primary Care Center of (...) -, complained that a lawyer from the ICS (Mrs. (...)) would have facilitated Dra. (...) -who provides services as a pediatrician at the aforementioned CAP- his data, specifically, the *"name, surname, ID and disability (...) and that I work at the CAP from (...) until 2012"*, the latter date that the person reporting here indicates which is incorrect, since *"he was laid off due to an occupational accident on 03/21/2013"*.

The complainant stated that he is convinced that it would have been the aforementioned ICS lawyer who would have provided his data to Dra. (...), to the extent that this lawyer had *"advised and assisted"* Dra. (...) in filing a harassment complaint against her husband, also an ICS worker.

In order to substantiate his statements, the complainant provided a copy of the complaint lodged by Dra. (...) on 30/08/2019 before the Police of the Generalitat-Mossos d'Esquadra (PG-ME), which contains the controversial data referred to the complainant here, as well as the name of the ICS lawyer, Mrs. (...), in the following terms:

"That the declarant works at the CAP of (...) as a pediatric doctor (...)

That since 2012 she stopped working at the aforementioned CAP. (...) (...) with DNI (Spain) number (the full number is included in the complaint) given that he was given an invalidity.

That Ms. (...) was the declarant's regular nurse.

That during a time the declarant managed some money that was received for the vaccinations/reviews that were given to 4-year-old children.

That, subsequently, this money was distributed among all the people who had participated.

(...)

That the declarant has evidence that Ms. (...) is currently claiming money from before 2012.

That all the procedures and management of Ms. (...) they are taken by her husband, Mr(...)(...), who (...) works as a pediatric nurse at the CAP of (...).

That last 29/08/2019, at 10:20 a.m., the declarant received an email from (...)C(...) in which he spoke about the same subject. (...)

That at 11:52 a.m. on the same 29/08/2019, the declarant received a new email from (...)

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That the declarant feels intimidated and threatened by the e-mails, given that, among other things, it states: "He is asking you for it. You know that he wants to get paid and will do everything possible and impossible...".
That today, 08/30/2019 at 4:30 p.m., the declarant received a new message on her phone, via the Whatsapp messaging application, of which she is providing a copy.
That this message was received from mobile phone 635 (...).
That due to the content of the message and given that it refers to the same topics that are cited in the emails, the declarant is convinced that she is a person linked to Ms. (...). (...)

That a letter from the ICS, Ms. (...) (...), called the phone from where the Whatsapp message was received and no one answered the phone.
(...)"

2. The Authority opened a preliminary information phase (no. IP 264/2019), 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 comply with the following:

- Indicate whether the secretary of the ICS, Ms. (...), had access to the ICS database that would contain the information, relating to the person making the complaint, that is mentioned in the complaint that Dra. (...) filed before the PG-ME (name and surname, ID number and data relating to leave due to disability). If you answer in the affirmative, specify the circumstances of this access, as well as the legal basis that would enable it.
- If the ICS has evidence that Ms. (...) or any other person in the service of the ICS, has facilitated Dra. (...) the disputed data relating to the person making the complaint; and, if so, indicate the legal basis that would have enabled this communication.

4. On 29/10/2019, the ICS responded to the aforementioned request through a letter in which it set out the following:

- That Ms. (...) is written "who appears and acts on behalf of the ICS".
- That "Mrs. (...) has access to the database of the Legal Advice of the Catalan Institute of Health in which all the judicial, administrative and legal proceedings of this entity are registered. Consequently, due to the development of her tasks as a lawyer she has access to personal data and specially protected data, both of workers and users".
- That "in relation to the data of Ms. (...) (...), Ms. (...) accessed the judicial file in order to respond to a request from the Labor Inspectorate last June 17, 2019 (...)".

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- That the ICS is not aware that Ms. (...) nor any other person in the service of the ICS has provided the controversial data to Dra. (...).

Along with its letter, the ICS provided, among other things, the following documentation:

- a) Accrediting documentation of the management carried out in the month of June 2019 by Mrs. (...), as a lawyer of the ICS, and that justifies the access to the file of the complainant here on that date.
- b) Declaration of Ms. (...), in relation to the facts that are the subject of the complaint, in which the

Next:

"That on August 30, 2019, at about 9 a.m. in the Legal Advice of the ICS (...), I received a telephone consultation from Dr. (...) in relation to facts that could constitute a criminal offense on the part of an ICS worker (husband of Ms. (...)). As a letter, I indicated not to respond to certain emails and proceeded to communicate the situation to the Management. Later, at about 5:30 p.m. Dra. (...) contacted me again to report a new incident related to the previous events. Faced with this situation, I raised different possibilities, including filing a complaint against an "unknown" third party.

That at no time did I provide personal data of Ms. (...). First of all, because I am fully aware of the data protection regulations and because filing a complaint against third parties does not require knowledge of their ID (...).".

- c) Declaration of Dra. (...), also in relation to the facts that are the subject of the complaint, in which he states the following: a) that on 08/30/2019 he informed Ms. (...), letter from the ICS at (...), the situation created as a result of the e-mails that had been sent to him on (...) (...) in relation to a matter that affected his wife, as well as for the WhatsApp message that he suspected had also been sent to him by this person; b) that the lawyer called the mobile number of the origin of the WhatsApp message without obtaining any response; c) who decided to file a complaint against the (...) (...) before the PG-ME; and, d) that it was the PG-ME agent who took her statement "who put the ID data of Ms. (...) to the complaint".

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 explained in the background, the complainant (who had provided services to the ICS) complained that Ms. (...) (ICS lawyer), would have revealed to Dra. (...) (pediatrician at the CAP of (...)) data

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his (in the words of the complainant: *"name, surname, ID and disability (...) and that I work at the CAP from (...) until 2012"*, to which he would have had access due to the position he occupies .

In order to prove the facts reported, a copy of the complaint was provided that Dra. (...) had lodged a complaint with the PG-ME against the complainant's husband (Mr. (...)C(...), also an ICS worker) for harassment. In this complaint; in which some actions carried out by the (...)C(...)that Dra. (...) he perceives as harassing and intimidating, and that they would be related to a matter that fell to his wife (here the complainant), the controversial data appear in the terms transcribed in the antecedent 1. There are also the data of Ms. (...), since Dra. (...) he mentions it because the lawyer took a specific action in his interest in relation to the matter that was the subject of the complaint; a circumstance that, according to the complainant here, would prove that it would have been this lawyer who would have revealed his data to the doctor.

Well, as has been explained in the background, the ICS has informed this Authority that, in fact, due to her status as a lawyer of the entity, Ms. (...) has access to the database of personnel at the service of the ICS and that in June 2019 this lawyer accessed the data of the person reporting here in order to carry out an action linked to this person , in which he acted on behalf of the ICS. Likewise, the ICS states that it is not aware that any person in the service of the ICS has provided data from the complainant to Dra. (...).

On the other hand, these actions include the statement given by the lawyer in relation to the facts reported to this Authority, in which she categorically denies having provided any information related to the complainant here, Dra. (...).

And, finally, the proceedings also include the statement given by Dra. (...), in which he states that the data relating to the DNI number of the person making the complaint contained in the complaint he filed before the PG-ME, was incorporated by the agent who took his statement.

Well, in view of the information regarding the person making the complaint contained in the complaint lodged by Dra. (...) before the PG-ME, it is not proven that it comes from a possible leakage of information by the lawyer or any other person at the service of the ICS, on the contrary, everything suggests that the information does not come from any database of the aforementioned entity. Thus, the data relating to the name, surnames, and the fact that the person making the complaint here took leave due to incapacity in 2012 is information that the doctor would know given the work relationship that existed for some time between the two, since they worked folded in the same CAP. And, precisely, the error in the date of discharge, which the doctor placed in the complaint in 2012, when in reality it took place in 2013, allows us to deduce that the information came more from a memory than from a source reliable, as it would be if someone had consulted an ICS database for that purpose. And finally, there is no evidence that Ms. (...) nor any other person facilitated Dra. (...) the ID number of the complainant here, and in this sense the explanation given by the doctor for the fact that this information is included in the complaint (which was incorporated by the same agent of the PG- ME who took a statement from him).

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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. File the actions of prior information number IP 264/2019, 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,