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File identification

Archive resolution of the previous information no. IP 339/2019, referring to the Catalan Health Institute (ICS) and Health Services Management (GSS).

Background

1. The Catalan Data Protection Authority processed the right of access protection procedure no. PT 21/2019, following the claim presented by Mr. (...) (hereinafter, claimant) against several entities, among which was the Catalan Institute of Health (hereinafter, ICS) and the company public Health Services Management (hereinafter, GSS), for disregarding the right of access to your medical history, as well as the identity of the people who had accessed your medical history (hereinafter, HC) through the E-CAP and SAP ARGOS Assistance applications.

As part of that rights protection procedure, and after the transfer of the claim to the claimed entities, the ICS and GSS handed over to the claimant several documents that contained lists of accesses to their HC made from from several health centers dependents of these two entities.

In view of the content of these lists, on 08/10/2019 the claimant submitted a letter to the Authority, in which he highlighted that numerous accesses to his medical history made from various health centers of the ICS were not justified. Specifically, he noted the following:

"(...) 4. It is absolutely false that all access to my Clinical History has been justified. 5. With regard to the information collected in the documents provided by GSS: a) The only attentions I have required from the Hospital (...) are: Two visits by Dr. (...) App. Respiratory, a visit from Dr. (...) -ORL- and the practice of an MRI by Dr. (...). I don't know what the other accesses are responding to. b) The care I have received at the Hospital (...) can be 4-5 visits to the Emergency Department, 3-4 visits by Dr. (...) and the practice of an effort test. I don't know what the other accesses are responding to. 6.- Regarding the information collected in the documents provided by the ICS: a) I have never been to the ABS of Cap Pont and, therefore, I have never required assistance from it, either optional or nursing, nor administrative services, nor any other. b) I have never been to the Guissona Medical Office, therefore, I have never required assistance from it, neither medical, nursing, administrative services, nor any other. c) I have never required assistance from ABS de Tremp, neither facultative, nor nursing, nor administrative services, nor any other. d) I have never been to CAP Primer de Maig and, therefore, I have never required assistance from it, neither elective, nor nursing, nor administrative services, nor any other. e) I have never been to Alpica's Local Consultancy and, therefore, I have never required assistance from it, neither medical, nursing, administrative services, nor any other. f) I have never been to the CUAP in Lleida and, therefore, I have never required assistance from it, neither elective, nor nursing, nor administrative services, nor any other. g) I have never required assistance in childbirth

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

from CAP Lleida Rural Nord, neither elective, nor nursing, nor administrative services, nor any other. h) They contain 4 accesses from January 21, 2019 without registration from where they were made. i) The ABS (...), from Lleida, ceased to be my assigned CAP since at least May 9, 2017. I do not understand why my medical records are being accessed with subsequent data. j) The records contain acronyms that I do not know what they mean. The Law clearly states that the data provided must be legible and understandable by the applicant. k) Despite knowing that the Law allows the non-disclosure of the data of the professionals who have accessed the clinical history, it would be good to know, at least, from which medical, nursing, administrative or any other services, you have made the access. Otherwise, this applicant cannot know whether the accesses have been legitimate and/or authorized."

On 11/11/2019, the Director of the Authority issued a resolution which, for what is now relevant, agreed, in point three of its dispositive part, as follows:

"Open a preliminary information phase for the purpose of elucidating whether the Catalan Institute of Health and/or the Department of Health have committed an infringement of data protection regulations due to illicit access to the HC and HC3 of the claimant."

2. In compliance with the resolution dated 11/11/2019, the Authority opened a preliminary information phase (no. IP 339/2019), in accordance with the provisions of 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, on the common administrative procedure of public administrations (from now on, LPAC), to determine if the facts were likely to motivate the initiation of a disciplinary procedure.

3. Parallel to this previous information, on 17/12/2019 the claimant filed an appeal against the resolution dated 11/11/2019 issued by the Authority in the rights protection procedure mentioned in point 1, in which he also referred to possible improper access to his clinical histories, making some nuances with respect to what he had indicated in his previous letter presented on 8/10/2019 before the Authority, and referring to several health centers dependent on the ICS and GSS. Specifically, in this second letter he referred to four documents, which contained several lists of access to his clinical histories, and noted the following:

"(...) In order to inform you of the latest actions of the public company Gestió de Serveis Sanitaris and, in addition, as the basis of the Repossession Appeal, I am attaching, commented on, four more documents."

- "Regarding my document 1: It is a document signed by the Director of the Health Services Management Center [GSS], which manages the Santa Maria University Hospital [HUSM] and the Hospital (...) [HCP], and which also includes data from my clinical history [HC] of the "Arnau de Vilanova" University Hospital in Lleida [HUAV]. Regarding this fact, I do not know that Dr.(...), Director of the GSS Center, has the authority, capacity and accessibility to my HUAV HC to

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

observe or extract dates from it. This document was received at my address, via burofax, last November 29 (...)"

- "Regarding my document 2: This is the information previously requested and received, regarding access to my HC. All those accesses recognized as correct in document 1, above, are validated in this document by means of a red check. Of the rest, not validated, I cannot say whether they are legal or not, whether they are authorized or not, etc.

- "Document 3: I state in this list, evidenced in yellow and orange, all the accesses that have not been authorized, given that I have not received any type of assistance in any of the centers listed there. I approve of the access to the ABS (...) and the CAP (...), given that they are the primary care centers to which I have been assigned."

- "Document 4: I can only recognize as true, after reading the letter from the Directorate of GSS Centres, the actions validated with a red check. On the other hand, I would like to add that, at this time, I have not received any letter from GSS, the public company that manages part of the primary care in Lleida, or from the ICS, regarding the non-pertinent accesses and not recognized, by me, in my HC."

On 12/18/2019, the claimant presented to the Authority the four documents he mentioned in his request for reinstatement. From reading the documents, it was clear that there were numerous accesses that the claimant considered unjustified.

4. As part of the prior information, on 12/18/2019 the ICS and GSS were required to report on the reason justifying each of the accesses that the claimant considered unjustified. This requirement was reiterated on 08/02/2021.

5. On 12/02/2021 the ICS and GSS responded to the aforementioned request through separate written letters, accompanied by various documentation.

5.1.- With regard to the accesses carried out from health centers dependent on the ICS, the following was indicated in the letter of response:

- That: "as can be seen from the attached letter from the entity signed by the head of the IT unit (...), a specific error occurred when extracting the traceability file and in the sent file output the ECAP connection center assigned to the user by default and not the center from which the user actually connected, since the connection center and the assigned center which is what is shown in the 'user can be different. Thus, in order to clarify this fact, a USER CENTER column has been included in the attached excel, which indicates the center where the user's login is created."

- That: "Regarding the accesses made from health centers managed by the Catalan Health Institute (ICS), an excel is attached with the details and the reason for access."

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

- That: *"the accesses from SAP are made from the Arnau de Vilanova hospital and they are all there justified."*

In the report dated 12/01/2021 of the IT unit accompanying the ICS, it was clarified from which of its centers each of the accesses to the HC of the claimant had been made, as follows:

"In the center column that appears referenced in the lists of accesses to the ECAP clinical history of Mr. where the user was actually connecting from.

*When an ECAP user is created, it is mandatory to assign them a center which usually matches the first job assigned. Normally when workers change centers this item is not maintained in the ECAP, since it is not necessary to make a change of connection center in ECAP, it only has to have permissions to be able to connect to the new center .
Anyway, the connection center is registered in the application.*

So the correct relationship considering the center from which the user actually connected is:

*1. Where in the list it says CAP Primer de Maig, it should say CS RAMBLA DE FERRAN. Specifically, these accesses on 23/05/2017 occurred from Central Services in Rambla Ferran because he changed doctors.
And the accesses of 05/07/2018 and 06/15/2018 correspond to CAP Eleven of September.*

*2. Where in the list it says ABS CAPPONT, it should say ABS EIXAMPLE, specifically the accesses of the days 10/02/2017, 15/02/2017, 23/02/2017, 20/03/2017, 23/03/2017, 27/03/2017, 30/03/2017, 07/04/2017 and 10/04/2017.
There are also some accesses that the center was Eleven of September. These accesses are from 17/08/2017, 18/08/2017, 28/08/2017 and 26/09/2017.
And finally there are accesses from 04/10/2018 which are indeed from Cappont.*

3. Where in the list it says CUAP Lleida, the center is correct regarding the accesses of 11/26/2017. With regard to the accesses of 03/09/2018 and 06/21/2018, they were made from CAP Onze in September.

4. Where in the list it says CAP Lleida Rural Nord, it should say CAP Onze de Setembre (Accessed on 09/12/2018)

5. Where the list does not include the center, it should include CAP Eleven of September (Accessed on 01/22/2019).

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

6. Where in the list it says Guissona medical office, it should say ABS Eixample (Accessed on 03/23/2017).

7. Where in the list it says Corporate Call Center, the center is CAP Onze de Setembre, but they are users of the centralized Health Call, who to do their work can access all the centers to schedule visits (Access on the 17/01/2019).

8. Where in the list it says Serveis Centrals Lleida, it is the generic center assigned to the Lleida ICAM, in fact the Doctor who joined is from the ICAM.
(Accessed on 10/03/2017 and 13/03/2017)

9. Where in the list it says Consultori Local d'Alpicat, it should say CAP Onze de Setembre.
(Accessed on 09/28/2017).

10. Where in the list it says ABS Eixample, it should say CAP Onze de Setembre. (Accessed on 04/10/2018).

11. With regard to the access on 28/01/2019 of CAP Onze de Setembre, the Management of CAP Onze de Setembre assessed the access as justified.

12. Where in the listing it says ABS Tremp - The center is the same."

5.2.- Regarding the accesses made from health centers dependent on the GSS company, the following was noted:

- That: "Dr. (...), director of GSS centers, did not access the medical history of the person concerned on dates close to 27.11.19 or on others."

- In the accompanying report dated 09/02/2021, the following was noted:

"Regarding the justification of the accesses contained in the clinical course that is part of the document number 1, it is necessary to indicate that in the clinical course itself it is explained what is the reason for assistance, external consultation, intervention, emergencies or others and therefore the access made by the professional.

Summary of accesses made from Santa Maria University Hospital and Pallars Regional Hospital:

9/18/18 HCP (...)

03/2/15 HUSM (...)

10/22/13 HCP Emergency Dr. (...)

10/22/13 HCP Urgencies Dra. (...)

10/22/13 HCP Urgencies Dra. (...)

08/11/11 HUSM Unit (...)

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

28/10/11 HUSM Unit (...)

25/10/11 HUSM Unit (...)

25/10/11 HUSM Unit (...)

2. Regarding the justification of the accesses contained in document number 4, it is attached annex which contains the category and service of the professionals and the date and time they made the accesses.

Duplicate accesses caused by an error when entering the ETC are highlighted in red.

It should be noted that since 2010 Mr. it facilitated being able to spontaneously request visits, analytical information, tests and medication prescriptions, which do not correspond to previous orders or schedules and which Mr. (...) may not remember.

3. The Board of Directors of Health Services Management dated October 2, 2019 authorize Dr. (...) Center Director to exercise the powers of manager provided for in Article 7 of the Company's Statutes and in accordance with his powers he gave an answer and delivered the documentation to Mr. (...).

The doctor (...) assuming the representation of the company sent him the clinical documentation, without this action entailing access to the ETC. Mr. (...) did not request the delivery of the documentation personally or by representation.

Doctor (...) performed the duties of manager until December 16, 2019."

6. On 02/16/2021, a copy of the writings and documentation sent by the ICS and GSS was delivered to the claimant, duly anonymized, so that, within 5 days from the day after the notification of this office, expressed what it considered convenient on the justification of access to his medical history, in view of the reasons given and the documentation provided by the ICS and by GSS, and informing him that, unless he provided further information that he could question the information provided by the ICS and by GSS, your complaint would most likely be filed.

The deadline granted has been far exceeded, without the claimant having submitted any written documents to the Authority.

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

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. As stated in the antecedents section, the claimant complained about the fact that the documentation given to him by both the ICS and GSS at his request, relating to access to his HC that would have been carried out from different health centers dependent on these entities, would not be justified, in reference to eventual improper access.

In this regard, within the framework of this phase of prior information and at the request of the Authority, both the ICS and GSS have put forward the various reasons that they consider would justify the access made to their HC of the person making the claim, and for the purpose of They have provided various documentation to prove it.

Specifically, regarding the accesses to the HC of the claimant carried out from centers dependent on the ICS, this entity has provided documents indicating the reason for each access, reasons that could fit into the provision of assistance healthcare to the claimant. And with regard to the accesses made from the ECAP application, he pointed out that the lists of accesses that were given to the claimant contained an error regarding the information regarding the center from which access to the his HC, since in the field where

in theory this information should appear, the information of the ECAP connection center *"assigned to the user by default"* and which *"is usually the first assigned workplace"*, and not *"the center from where the user actually connected"*. In the documentation he provided to the Authority, he specified, however, in relation to each access, the health center from which it would have actually occurred.

On the other hand, with regard to the accesses to the HC of the claimant carried out from centers dependent on GSS, this entity has also justified each of the accesses that the claimant had questioned, referring to reasons that could also fit in the provision of health care to the claimant.

Particularly, with regard to the statements of the person claiming referred to the consideration that the director of GSS centers had accessed his clinical history of the Hospital Universitari Arnau de Vilanova de Lleida (HUAUV), due to the fact that he had been the undersigned person of the letter dated 27/11/2019, by which compliance was given to the resolution of the Authority issued in the framework of the rights protection procedure no. PT 21/2019, and he was given a copy of his HC, it should be noted that GSS has stated that on the date the aforementioned letter was signed, the director of centers also held the position of manager of GSS, and that for

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

this reason he signed the letter, without this implying that he had accessed his HC, a fact which in any case GSS has denied.

Faced with the set of documents and statements made by the ICS and GSS, which enjoy credibility, the claimant has not made any statement to contradict them, nor has he provided any documentation that questions them, although on 16 /02/2021 the Authority gave him a copy of all the documents sent by the ICS and GSS where these entities justified the accesses that the claimant questioned, so that in their view he could allege what he considered appropriate .

So things are, once the reasons put forward by both entities have been evaluated, it is not observed that the accesses that the claimant had questioned in the various letters that he has presented to the Authority, are lacking in justification. So there are no indications that such accesses are improper. And it should be pointed out that, as far as the director of GSS centers is concerned, there are no elements that lead to consider that he accessed the claimant's HC, beyond the delivery of the copy of his HC, together with the 'written that he signed. And this last treatment would be protected by the legal basis provided for in article 6.1.e) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons by which regarding the processing of personal data and the free circulation thereof (hereafter, RGPD), due to the fact that it was carried out for the fulfillment of a legal obligation applicable to the data controller (GSS) on behalf of whom he was acting, how to comply with the resolutions issued by this Authority (art. 16.3 Law 32/2010 and 58.2.c RGPD).

In short, with regard to both the ICS and the GSS, 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 violations provided for in the legislation on data protection, should be archived.

Therefore, I resolve:

1. Archive the previous information actions number IP 339/2019, relating to the Catalan Health Institute (ICS) and Health Services Management (GSS).
2. Notify this resolution to the ICS, the GSS and the person making the claim.
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.

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 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 its notification, in accordance with the which provides for 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,