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File identification

Archive resolution of the previous information no. IP 59/2020, referring to the University Hospital of Girona Dr. Josep Trueta, depending on the Catalan Health Institute.

Background

1. En data 12/02/2020, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, a través d'un trasllat provinent de l'Agència espanyola de protecció de dades, un escrit d'una persona pel qual formulava una complaint against the University Hospital of Girona Dr. Josep Trueta (henceforth, the Hospital) - depending on the Catalan Institute of Health -, due to an alleged breach of the regulations on personal data protection.

In particular, the complainant explained that she was admitted to the Hospital for a period of 6 days from the day (...), and that after a few months of leave she joined her workplace. The person making the complaint complained that when he joined his workplace in a company (...), his work supervisor communicated to him a whole series of information relating to his health which it was inferred that he was aware of the injuries that would have motivated his hospital admission ("que había recibo de la cabeza y tenía hematomas") and also that he had left the hospital earlier than planned ("que también yo había marchado antes que me lo dijeran los médicos"), and that this information would have been disseminated to third parties, while she was admitted to the Hospital. The complainant pointed out that her supervisor had told her that the person who had revealed the said information to her was her young woman who worked as a nurse at the Hospital, but she did not give him her name or surname.

The complainant provided an extract from the "Results of general emergency" report, issued by the Hospital on (...), describing the injuries that were detected in the "whole body CT" medical test.

2. The Authority opened a preliminary information phase (no. IP 59/2020), 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 were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 02/25/2020, the reported entity was required to provide a copy of the record of access to the shared clinical history (hereafter, HC) of the reporting person for the period covered between (...) to (...) (date of the letter of complaint to the AEPD), carried out through the clinical history management system, in which it is recorded, apart from the date and time of access, screens or

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resources accessed. Likewise, it was required that the people who accessed it be identified and the professional category they held within the organization be indicated. Finally, the entity was required to specify the reasons that would justify each and every access made to the medical history referred to during the specified period, and specifically, whether the people who accessed it were authorized.

4. On 11/03/2020, the Hospital responded to the aforementioned request, providing the following documentation:

- a copy of the log of accesses to the shared HC of the reporting person for the period from (...) to 12/23/2019, made through the clinical history management system, in which it contains, date and time of access, professional category and name of the users who have accessed and resource that has been accessed. The register contains a total of 97 accesses.
- a document in which the entity, through the compilation of the answers of the different managers of the Hospital's units (medical director, nursing director, head of hospital admissions, economic and financial director, doctor of the BST-Girona, territorial director ID Girona, director of the Technical Secretariat of the IAS-ICS Girona, and the head of the emergency service), justifies the access of professionals to the HC, due to the 'exercise of their functions.

5. On 02/09/2021, also during this preliminary information phase, the Authority's Inspection Area informed the complainant that the Hospital had informed that all access to her medical file had been carried out by authorized personnel in the exercise of their functions, which is why it was essential to be able to continue the investigations, to know the identity (name and surname) of the young woman from her supervisor, who, according to his information and on the date of the events reported, he was working as a nurse in the Hospital. To this end, he was informed that the written testimony of his supervisor would be required to confirm the identity of his young woman, unless he expressed his opposition to this action within 10 days.

6. As a response to this communication, the reporting person contacted this Authority, through several emails sent to the email address of the Authority's mailbox (11/02/2021 and 12/02/2021), in which he reiterated that he did not know the name of the young woman from his supervisor and that he had no way of knowing ("I would also like to know and I don't know because (...) me he doesn't want to say it"), and requested that the supervisor's written testimony be required ("tell him directly(...)because with you he will surely tell you because if I ask him, he does not behave well with me, and I don't know how he could tell me all this, whether it's true or he's lied").

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7. On 02/24/2021, the Authority required written testimony from the supervisor of the complainant's workplace, as to whether one of her young women, or someone close to her, worked at the Hospital, and if so, to identify the name and surname of this person.

8. On 03/10/2021, the witness responded to the Authority's request, denying that any of her young women or anyone close to her worked at the Hospital.

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.

Specifically, the complainant complained that when she joined work, after a medical leave, she had a conversation with her supervisor who made it clear that she knew information contained in her HC, specifically, the injuries detected during his hospital admission on date (...) and his departure from the Hospital earlier than planned. According to the complainant, in the course of the conversation, the same supervisor also pointed out to her that the person who had revealed the controversial

information was his young woman who worked at the Hospital as a nurse, but he did not give her her first or last name.

In this respect, it should be pointed out that these facts could potentially constitute an infringement in terms of data protection, due to the violation of the principle of confidentiality (art. 5.1.f. RGPD).

Having said that, it must be stated that it is an unquestionable fact that the Hospital knew the data relating to the complainant's health following her hospital stay, however, the truth is that with the information available it is not possible to determine there is no doubt that a member of the Hospital was the source of the eventual leak.

In this regard, it should be noted that improper access to the complainant's medical history, if it had occurred, could have constituted an indication of an eventual leakage of the controversial personal data, but the truth is that, according to the Hospital, all access to the clinical history was justified (4th background).

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As things stand, as stated in the proceedings, this Authority contacted the complainant to inform him that in order to continue the investigations, it was necessary to know the identity of the young woman from his supervisor who allegedly had access from improper way to her HC, and the complainant herself expressed her agreement to require written testimony on this end from her supervisor, since she did not know the identity of this person and had no way of knowing.

That is why, in the last instance, this Authority required testimony from said supervisor, who categorically denied having any family or social ties with any person linked to the Hospital, thus not providing any new data that would allow this Authority alone request from the Hospital more detailed information about any of the 97 accesses to the complainant's HC made by a specific worker, during the period existing between the date of the complainant's hospital admission and the date on which she reported the facts. As things stand, there is no element that allows us to infer that the Hospital would have provided the health data on the person making the complaint, and specifically, that the origin of the eventual leak was through one of the young women of the supervisor who worked there as a nurse.

It could also have been an indication of a possible leak by the Hospital if the data disclosed had been of a nature that only the Hospital staff and/or the reporting person could know. But, in this sense, it must be emphasized that the information that the supervisor would have communicated to him during the conversation, although it cannot be questioned that knowledge was inferred from this about the extent of some of the injuries suffered by the complainant here ("que había recibo de la cabeza y tenía hematomas"), or who would have left the Hospital earlier than planned ("que también yo había marchado antes que me lo dijeran los medicos"); it was information that could also be known to third parties in the family, social or work circle of the same person making the complaint (such as a colleague from the same workplace), which does not allow us to rule out that the supervisor had eventual access to the controversial information through a different route to the Hospital. Be that as it may, there are not enough elements to prove that the Hospital was responsible for the reported data leakage.

Having reached this point, it must be taken into account that the sanctioning administrative procedure is particularly guarantor because of the consequences that can be derived from it. That is why it is necessary, for its initiation, the existence of evidentiary elements or sufficient rational indications that allow the commission of an infringement to be imputed, elements that are not present in the case under examination.

At this point, it cannot be ignored that the penal administrative law applies, with some nuance but without exceptions, the inspiring principles of the criminal order, resulting in the full virtuality of the principles of presumption of innocence and in doubt pro

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reo in the area of sanctioning power, which shifts the burden of proving the facts and their authorship to the accuser. In short, the presumption of innocence must always rule without exception in the penal system and must be respected in the imposition of any penalty.

Therefore, based on the right to the presumption of non-existence of administrative responsibility, until the contrary is proven (art. 53.2.b LPAC), the filing of the present proceedings proceeds.

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. File the actions of prior information IP number 59/2020, relating to the University Hospital of Girona Dr. Josep Trueta
2. Notify this resolution to the University Hospital of Girona Dr. Josep Trueta and the complainant.
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 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,