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File identification

Archive resolution of the previous information no. IP 81/2020, referring to the Hospital Sant Pau i Santa Tecla Foundation of the Health and Social Network Sta. key

Background

1. On 03/03/2020, the Catalan Data Protection Authority received a letter from a person making a complaint against the Sant Pau i Santa Tecla Hospital Foundation of the Santa Tecla Health and Social Network (henceforth, the Network), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the person making the complaint explained that the workers of the Sant Pau and Santa Tecla de la Xarxa Hospital during the working day must work wearing "their identification card with name and surname" in a visible place and complained that this fact states that "any user can access data from his home, personal information published on the network or social networks".

The reporting person provided an image of said card, which shows their first and last name and the job they hold within the organization.

2. The Authority opened a preliminary information phase (no. IP 81/2020), 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 16/06/2020 the reported entity was required to report on whether the staff of the health center must wear, in a clearly visible place, a card that identifies them with the name and surnames, throughout their working day in front of all users of the hospital center, and in case of an affirmative answer, on the legal basis that would legitimize said treatment.

4. On 06/19/2020, the Network responded to the aforementioned request through a letter in which it stated, among others, the following:

- That "the Foundation's healthcare staff must wear this card that identifies them with their first and last name in a clearly visible place throughout their working day, which we affirmatively confirm is true".

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- That "on the one hand, we find the right to the protection of workers' personal data in conflict with the right of patients and users to know who is attending to them. None of these rights is absolute, therefore, the regulations indicate that a case-by-case weighting must be done to see which right should prevail in the specific case."
- That "the entities of the Network provide health and social services on behalf of CatSalut, certain rules apply to them such as the Charter of Rights and Duties of Citizens (Article 3.1.8), as well as Law 44/2003, of 21 of November, on the organization of health professions (article 5.1.e), which categorically establish the obligation of personnel in the field of health care to identify themselves to users."
- That "this treatment of the workers' data would be legitimate taking into account as a legal basis article 6.1.c) of Regulation (EU) 2016/679 (RGPD), due to the fact that it is a legal obligation, by the aforementioned rules and the legal foundations that we provide in the report, with the addition that we are already applying in this case the principle of data minimization, as long as neither the DNI nor the person's photograph appears, but only his name and position, the position as such not belonging to the person but to the organization."
- That "this treatment would also be legitimate having as a legal basis article 6.1.b) of the RGPD due to the fact that it is a necessary treatment for the execution of a contract. The contractual obligation that binds the Network's institutions to the Citizens' Charter of Rights and Duties cannot be ignored, which, not having the status of Law, also constitutes a legitimizing title for this communication of data without the need for consent from the affected by virtue of this legal basis."
- That "the communication of the data could even be enabled by the legal basis of article 6.1.e) relating to the processing necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the responsible for the treatment, while here the person responsible for the treatment, the Foundation, would be acting as a provider of a public service."
- That "identifying data would not fall under the category of specially protected data, it is the worker's responsibility to break this presumption and bring to the attention of his manager or hierarchical superior the special circumstances that in his case would advise his anonymity (if it was 'a victim of gender-based violence, if he were a victim of harassment, if he was part of a protected witness program, etc...'). If none of these circumstances occur, it would not be justified the refusal of workers to reveal their first and last names to users."
- That "it is preferable to maintain and guarantee the right to information of the users to know which professional they are dealing with, whether they are health practitioners, non-health administrative staff, or even cleaning staff, and that the identification of the professional in the scope

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of health care must include the name and surname of the professional and their professional category so that the patient or user can easily identify them."

- That "the correct identification of staff, in addition to being a legal obligation as it is a citizen's right that in turn becomes a duty for workers, contributes to the quality of care in our centers, and that we are authorized to carry out this treatment without the express consent of the workers in application of the RGPD."

The reported entity attached to the written documentation the Opinion on the scope of the right to the protection of personal data, specifically the identification with first and last name, of workers in the field of health care, issued by the Santa Tecla health and social network in February 2020, following the complaint of some workers carrying the controversial card.

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 expresses his disagreement with the fact that the staff working at the Hospital de Sant Pau and Santa Tecla de la Xarxa must wear a card during their working day that identifies them through the first and last name, and job they occupy within the Hospital.

In this respect, the first thing to point out is that the Network is a grouping of several entities, among them, the Sant Pau i Santa Tecla Hospital Foundation, which provides public health services in concert with Calsalut, and in this sense, is part of the comprehensive system of public use of Catalonia - SISCAT - (Decree 196/2010).

Having said that, it should be noted that, certainly, in view of the definitions established in article 4.1) and 4.2) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 of April, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD), the identification of the people who work at the Hospital de la Xarxa, through the controversial card, which includes your first and last name and workplace, is a processing of personal data that must be subject to the provisions of the RGPD.

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With regard to the processing of personal data, article 5.1 of the RGPD includes the principle of legality according to which the processing of personal data must be lawful, fair and transparent in relation to the interested party, and, for a treatment to be lawful, it must be based on one of the legal bases established in article 6.1 of the RGPD, among which, the following: "c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"; and "e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment."

In this regard, article 6.3 of the RGPD establishes that the basis of the treatment indicated in article 6.1, letters c) and e), must be established by the Law of the European Union or by the law of the Member States that s apply to the data controller. The reference to the legitimate basis established in the internal law of the Member States referred to in this article requires that the regulatory rule has the status of law (Article 53 CE), as the protection of personal data is a fundamental right, as explicitly recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

In this sense, reference must be made to Law 55/2003, of December 16, on the Framework Statute for the statutory staff of health services, in which - similarly to how article 53.1.b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations - establishes, in its article 19, the obligation of the statutory personnel of the health services (without distinguishing between the health personnel and the that is not) to identify themselves by their name and professional category to the users of the National Health System, in the following terms:

"Article 19. Duties.

The statutory staff of the health services are obliged to:

(...)

ñ) Be identified by their number and professional category by the users of the National Health System."

Also, along these lines, Law 43/2003, of 21 November, on the organization of health professions, in its article 5, relating to the general principles of the relationship between health professionals and the people served, establishes the following:

"1. The relationship between healthcare professionals and the people they serve is governed by the following general principles:

(...)

e) The professionals and those responsible for the health centers will facilitate the exercise of the right for their patients to know the number, qualification and specialty of the health professionals who attend them, as well as to know the category and function of these, if so were defined in their center or institution."

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Likewise, the Charter of rights and duties of citizens in relation to health and health care, prepared by the Department of Health of the Generalitat of Catalonia in June 2015, also states, in its article 3.1.8, that "the person has the right to know the name, profession and professional category of the staff who carry out the care and that they are presented and identified in a clear and visible way".

It is also necessary to take into consideration article 53.1.b) of the LPAC, which recognizes the right of the persons interested in the administrative procedure to "identify the authorities and personnel at the service of the public administrations under whose responsibility they are processed the procedures. Under the protection of this provision, it must be understood that the right is recognized for any person who addresses a public administration for any procedure or management to identify the person who attended to him by his name and surname and, if applicable, your position or place of work. As stated by this Authority in its opinion CNS 27/2020, this would be equally applicable to the care staff of the entity that provides services based on the provisions of Law 55/2003, of December 16, of the Statute framework of the statutory staff of the health services.

Therefore, it is clear that there is an obligation on the part of the statutory staff of the hospital center, either healthcare staff or management and service staff, to identify themselves to users. The purpose is none other than to guarantee that the citizen knows at all times the identity of the person who attends him. In this sense, it is considered that the obligation to wear the controversial card must be understood as part of this duty of the statutory staff (as it would be of any public worker) to identify themselves to the person being served, in attention to the specific functions of the job held.

As things stand, the provision for the identification of statutory staff has legal protection in the rules with the rank of law to which reference has been made, and in particular article 19 of Law 55/2003, of December 16, and in this sense the treatment object of complaint is considered legitimate and necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment (art. 6.1.e. RGPD), as the services hospital assistance provided by the Hospital de Sant Pau and Santa Tecla de la Xarxa, are publicly owned, and also to fulfill a legal obligation applicable to the person responsible for the treatment (art. 6.1.c RGPD).

Once the legality of the treatment has been determined, it is necessary to assess, in view of the rest of the principles of the RGPD, whether the personal data included in the identification card of the Hospital de Sant i Santa Tecla staff are the minimum necessary for the fulfillment of the intended purpose. In this regard, article 5.1.c) of the RGPD establishes that "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed". So, based on this principle of data minimization, and bearing in mind that the intended purpose in this case is the mere identification of the health center's statutory staff, it is sufficient to know the name and surname of this

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person and, if applicable, the position or job they hold, and these are the personal data collected on the disputed card.

Consequently, and in view of what has been set out here, it is considered that the processing of personal data relates to the fact that the statutory staff of the Hospital de Sant Pau and Santa Tecla de la Xarxa must wear a card showing their first and last name and workplace, is data processing in accordance with the principles of data protection regulations.

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 number IP 81/2020, relating to the Foundation Sant Pau and Santa Tecla Hospital of the Health and Social Network Sta. key
2. Notify this resolution to the Hospital Sant Pau i Santa Tecla Foundation of the Health and Social Network Sta. Key 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 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,