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## File identification

Archive resolution of the previous information no. IP 120/2020, referring to the Department of Education

## Background

1. On 28/04/2020, the Catalan Data Protection Authority received a letter from a person, as a representative of the union (...), for which he made a complaint against the Department of Education (hereinafter, the EDU Department), due to an alleged breach of the regulations on the protection of personal data.

In particular, the person making the complaint stated his complaint in relation to the document issued by the Department of EDU, dated 09/19/2019, which is entitled "Document for the organization and management of the centers", and with the subtitle "Teaching staff management". In this regard, he referred to point 5 of the said document, on the "Absence Register", and specifically, to section 5.3 on "Notifications of leave due to illness or temporary incapacity", in which it is established that: "The directors of the centers must send the medical notices of discharge, confirmation and discharge as soon as possible to the personnel management units of the territorial services or, in the city of Barcelona, of the Consorci d'Educació de Barcelona. The announcements must be sent scanned, in PDF, by e-mail. The original communications must remain at the center, which must keep them for a period of five years." In this regard, the complainant explained that the resignation notices of the teachers affiliated to the Muface regime - unlike the resignation forms of the teachers affiliated to the social security regime - contain the reason for the resignation, and although it is done through of an "ICD code" (international classification of diseases), the numerical codes that indicate the specific diagnosis can be consulted openly on the internet, among other websites, on the website of the Ministry of Health, Consumers and Social Welfare (...)

In this regard, the union denounced that, as long as Muface does not change the controversial termination form - a matter on which the union informs that it has filed a complaint with the Ombudsman, and which has also been the subject of study in the "Report on the temporary disability leave parts (IT) of Muface and data protection" of the Ministry of Territorial Policy and Public Function-, the Department of EDU, in the "Document for the organization and management of the centers" for the 2019-2020 academic year, establishes that the termination notices of the teachers attached to the Muface regime, "must be delivered to the centers' management, as well as the serious fact that said notices, which contain such sensitive data, must remain in educational centers for a period of five years."

The reporting person provided various documentation relating to the events reported, specifically:

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- The "Report on the parts of temporary disability (IT) of Muface and the protection of data", issued by the Ministry of Territorial Policy and Public Service, which guarantees that the data of the "CIE code" appears in the referenced form .
- Copy of the response letter from the Ombudsman addressed to the representative of the union (...), with an exit registration date of 04/10/2020, in which he sets out the inquiries made on the subject.
- The "Document for the organization and management of the centers", dated 09/19/2020, of Department of EDU.

2. The Authority opened a preliminary information phase (no. IP 120/2020), 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 06/25/2020 the reported entity was required to, among other things, report on whether the union (...) had already filed a complaint about the object of the complaint prior to the complaint presented to the Authority, and whether as a result of this, the controversial point 5.3 of the "Document for the organization and management of the centers" had been modified. Also, to identify the people who, due to the functions entrusted to them or the position they hold within the EDU Department, would have access to notices of leave due to illness or temporary incapacity of the staff attached to Muface, and on the legal basis that would legitimize the EDU Department for the collection of the information relating to the "CEI codes" contained in the said communications. Also, it was required to be informed about the functions of the directors of the educational centers that would justify the access to the personal data contained in the referenced termination notices of those people attached to Muface who are part of the educational collective of the school center Lastly, to be informed about the legal basis that would legitimize the conservation

of the originals of said termination notices in the schools for a period of 5 years.

4. On 07/07/2020, the EDU Department responded to the aforementioned request through a letter in which it set out, among others, the following:

- That "On 11/11/2019 the consultation was received from Mr. (...), which is identified as "del union (...) and health representative of the union (...)"
- That "On 14/11/2019, the data protection representative sent the query to the data protection representative of MUFACE, so that he can provide the legal bases and motivations, if any, that can justify the differentiated treatment regarding social security termination notices."

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- That "On 11/19/2019, the MUFACE data protection delegate sent a Report on MUFACE's temporary disability leave certificates and data protection drawn up by the MUFACE Social Benefits Department. The same, day was transferred to Mr. (...) and to the Technical Cabinet of the Department of Education the report received by the data protection delegate of MUFACE."
- That "As a result of the request made by the union (...), it is reported that the document for the organization and management of the centers on the management of teaching staff has been modified in such a way that it provides for the following :

"The director of the center must send the medical notices of discharge, confirmation and discharge to the personnel management units of the territorial services or to the Consorci d'Educació de Barcelona as soon as possible. Original social security termination notices must be sent as scanned PDF files by email. The original social security termination notices must be kept at the center, which must keep them.

The communications of the mutual MUFACE must be sent scanned, in PDF, by mail electronic to the personnel management units of the territorial services or to the Consorci d'Educació de Barcelona, which will also be in charge of keeping the original communications.

Leave notices must be kept for a period of five years, in the event of an accident at work, and for a period of three years in the event of a common illness. This term begins to count from the medical discharge with or without a declaration of invalidity".

- That "With this change in the wording of this section 5.3 relative to notices of leave due to illness or temporary incapacity, MUFACE notices will not be kept by the director of the center, but only by the management units of personnel from the territorial services or the Barcelona Education Consortium. With this change, it will be guaranteed that only these units can have access to the CIE code (international classification of diseases)".
- That "the units that will have access to notices of leave due to illness or temporary incapacity of staff attached to MUFACE will be the personnel management units of the territorial services or of the Barcelona Education Consortium, which are competent to manage leave of the teaching staff, in accordance with the functions provided for in article 185 of Decree 274/2018, of December 20, restructuring the Department of Education. Likewise, the General Sub-Directorate of Teaching Staff Management could also have access to this data, in accordance with the functions envisaged in article 42 of the Decree."

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- That "The legal basis that legitimizes the collection of information relating to the "CEI codes" contained in the said communications by the Department of Education is article 19.3 of the revised text of the Law on Social Security of civil servants of the State (Royal Legislative Decree 4/2000, of June 23)."
  
- That "in accordance with Decree 155/2010, of November 2, of the management of the centers public educational institutions and professional teaching management staff, it is up to the management of each public center, among others, to act as head of its staff. It is normal for them to be the recipients of the termination notices from their staff, but they have no need to access the personal data they contain, in the same way that they do not have access to the social security notices."
  
- That "The problem lies in the fact that Muface records these particularly protected personal data, which have no reason to be informed in their communications."
  
- That "The document retention period is provided for in the Document Evaluation Table, with code number 18 and DOGC number (see document 3): 1854, which provides for a five-year period for ILT and Invalidation files Provisional Work Accident and three-year ILT and Provisional Invalidation files from Common Illness. This has been foreseen in the new wording of the document for the organization and management of the centers on the management of teaching staff."

The reported entity attached various documentation to the letter.

#### 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.

#### 2.1. On the custody of medical communications

The complainant complains about the protocol drawn up by the EDU Department for the 2019-2020 school year, which is entitled "Document for the organization and management of the centers", and specifically what is contained in point 5.3 referring to "Notifications of leave due to illness or temporary incapacity". This section provides that:

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"The directors of the centers must send the medical notices of discharge, confirmation and discharge as soon as possible to the personnel management units of the territorial services or, in the city of Barcelona, of the Consorci d'Educació de Barcelona. The announcements must be sent scanned, in PDF, by e-mail. The original communications must remain at the center, which must keep them for a period of five years."

The complaint focuses precisely on the fact that the managements of the educational centers are in charge of receiving and keeping the medical reports of the staff attached to Muface, because these include the data of the "CIE code", information that the union considers to be excessive and which should not be included, since information can easily be obtained from it on the reason for the leave or temporary incapacity of the people affected.

Well, the first thing to point out is that, although the object of the union's complaint filed before this Authority is not that the "CIE code" data appears in the medical notices of discharge drawn up by Muface, but that, taking into account this circumstance, regardless of whether the educational centers are the ones who receive the termination notices and keep them, it is considered appropriate to highlight, due to the unquestionable link between one fact and the other, that it is not up to this Authority to pronounce on whether or not the data collected in the referenced Muface medical statements are excessive or not, then this body is not under the jurisdiction of this Authority, in accordance with article 3 of Law 32/2010, of October 1.

Having established the above, and starting from the premise that the responsibility for the content of the data collected in the termination notices cannot be placed on the EDU Department of social security or the Muface that have not been drawn up by the Department, it is necessary to focus on the fact of whether the established in the protocol on the management of the educational centers can receive and keep the termination notices issued by other entities outside the Department violates data protection regulations.

In this regard, it should be noted that Decree 155/2010, of November 2, of the management of public educational centers and of professional teaching staff, in its article 3, relating to the functions and attributions of the management, establishes that it corresponds to the management of each public center, among others, the exercise of the functions of "head of its staff". That being the case, it can be concluded that among the functions of the director of the educational center would be included that of being the receivers of the notices of termination of his staff. So, from the prism of data protection, it is considered that what is provided for in point 5.3 of the "Document for the organization and management of the schools" is correct, since the directors of the educational centers are the ones in charge of the reception and custody of the cancellation notices are in accordance with the powers granted to them by the sectoral regulations, and do not in themselves violate data protection.

Another thing is that, as reported by the EDU Department, based on the principle of prudence, it has been decided to modify this section 5.3 in the sense that, with regard to the communications of

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leave issued by Muface, the managements of the educational centers are no longer the ones in charge of keeping them, but once they receive them, they must send them scanned, in PDF, by email to the personnel management units of the territorial services or to the Consorci d'Educació de Barcelona, which will also be in charge of keeping the original communications. So things are, it can be concluded that, although the mechanism that had been established in the original wording of section 5.3 of the "Document for the organization and management of the centers" entailed a communication of a data that could be considered excessive, the truth is that this eventual breach of data protection regulations would not be attributable to the EDU Department. And, in this sense, it is worth emphasizing that the solution proposed by the EDU Department with the new wording of section 5.3 of the referenced protocol is certainly more respectful of the right to data protection.

## 2.2. About the conservation period

In relation to this, the complainant expresses his disagreement with the provision originally included in the "Document for the organization and management of the centers" that the originals of the medical reports of the educational staff attached to Muface had to remain in the center school "for a period of five years."

In this regard, it is necessary to refer to article 5.1.e) of Regulation (EU) 2016/679 of the Parliament European and Council, of 27/4, relating to the protection of natural persons with regard to processing of personal data and the free movement thereof (hereinafter, the RGPD), which regulates the principle of limitation of the retention period, according to which the retention of data in such a way that the interested parties can be identified, only must be kept for a period no longer than is necessary for the purposes of processing personal data. The duty to limit the retention period of the data is imposed by the RGPD on any data controller, however, for public administrations this duty must be nuanced and, for this reason, the RGPD expressly allows for the extension of the retention for the purposes of file in the public interest.

At this point, it is necessary to go to article 9 of Law 10/2001, on archives and document management, which establishes the following: "Once the active and semi-active phases are concluded, it must be applied to all public documents the evaluation regulations, on the basis of which their conservation is determined, due to their cultural, informational or legal value, or their elimination.

No public document can be removed if the regulations and procedure established by regulation are not followed."

In this sense, the documentary evaluation tables

(TAAD), drawn up by the National Documentary Access, Evaluation and Selection Commission (CNAATD), determine for each documentary series, the retention period and the criteria for applying the regulations governing access to documents.

Well, having said that, the first thing to note is that with the new wording of point 5.3 of the "Document for the organization and management of the centers", as stated in the previous section,

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it is no longer the educational centers that are in charge of keeping the originals of Muface's medical reports, but the personnel management units of the territorial services or the Consorci d'Educació de Barcelona. The retention period for the documents by the indicated entities is also modified, with the following terms: "Dismissal notices must be kept for a period of five years, in the event of a work accident, and for a period of of three years in case of common illness. This term begins to count from the medical discharge with or without a declaration of invalidity".

So things are, although it is inferred from the letter of complaint that the main complaint is that it is the centers that keep the controversial medical reports, and secondarily that they keep the document for a period of five years, it should be noted that the new forecast of the retention periods of the controversial documents by the personnel management units of the territorial services or the Barcelona Education Consortium, is in line with the forecasts of the Order of the Minister of Culture of 17 of January 1994, by which different documentary evaluation tables are approved, among others, the TADD number 18, relating to the documentary series "Dismissal and dismissal for transitory work incapacity (ILT)": "The files of ILT and Provisional Work Accident Disability approved or denied may be removed five years after medical discharge with or without a declaration of disability. ILT and Provisional Invalidity records from Common Illness approved or denied can be deleted three years after medical discharge with or without a declaration of invalidity".

On the other hand, with regard to Muface's medical reports that the staff of the educational centers could have delivered to their directors, when the initial wording of the "Document for the organization and management of the centers" was still in force, it is necessary to the following observations.

First of all, it should be noted that the initial draft was maintained during the period of time that elapsed from its issue, September 2019, until July 2020 at the latest, at which time the EDU Department responds to the request of this Authority, and communicates the change in wording. That is, during the 2019-2020 school year. That being the case, any medical report delivered during the referenced period would not have exceeded the limit foreseen with the new wording, of five or three years, depending on the case. Also, there is no evidence that the educational centers have kept this information beyond the necessary time, and therefore, in the present case, there is not sufficient evidence to consider that the principle of limitation has been violated of the conservation period.

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.

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Therefore, I resolve:

1. File the actions of prior information number IP 120/2020, relating to the Department of Education
2. Notify this resolution to the Department of Education and communicate it to 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 denounced entity 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 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, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,