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08008 Barcelona

File identification

Archive resolution of the previous information no. IP 175/2020 regarding the Care Consortium Primary School of Health Barcelona Esquerra and the Catalan Institute of Health.

Background

1. On 06/26/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Catalan Institute of Health (hereinafter, ICS) on the grounds of 'an alleged breach of the regulations on the protection of personal data. Specifically, the complainant complained about alleged improper access to his medical history and the subsequent dissemination of the data consulted to third parties.
2. The Authority opened a preliminary information phase (no. IP 175/2020), 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 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. On the dates 08/05/2020 and 08/06/2020, at the request of this Authority, the reporting person provided additional information regarding the events reported, specifically, that he was a user of the Casanova Primary Care Center in Barcelona (henceforth CAP Casanova), and that the unjustified accesses he reported would have occurred in the period between May and December 2018.
4. In this phase of the investigation, it was found that the CAP Casanova, of which the complainant was a user, was not managed by the Catalan Institute of Health - reported entity initially-, but by the Barcelona Esquerra Primary Care Consortium (CASPBE), an entity that manages, among others, the CAP Casanova.
5. On 04/09/2020 the CASPBE was required to comply with the following:
 - Provide a copy of the record of access to the reporting person's clinical history recorded in their clinical history management program, from 05/01/2018 to 12/31/2018.
 - Indicate, in relation to each of the accesses: a) the center (CAP) managed by the CASPBE from which it was accessed; b) the identity of the people who accessed and their professional category; and, c) the reason that would justify the access.

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6. Also in this information phase, on 09/04/2020 the Department of Health, as responsible for the shared clinical history file (hereafter, HC3), was requested to provide a copy of the record of 'accesses to the HC3 of the reporting person, in the period between the months of May and December 2018.

7. On 09/21/2020, the CASPBE responded to the request by providing a copy of the record of access to the complainant's medical history in the required period. Also, in its writing, the CASPBE justified the provenance of each of the accesses contained therein.

8. On 06/10/2020 the complainant submitted a new letter, in which he identified the person who would have accessed his HC3 by name, surname and professional category (doctor), and informed that these accesses would have been carried out from one of the centers where this professional had provided services (CAP La Solana de Sant Andreu de la Barca and Hospital de Bellvitge), of which he had not been a user.

10. In view of the new information provided by the complainant, it was found that both CAP La Solana and Hospital de Bellvitge depend on the Catalan Health Institute.

11. Given the lack of response from the Department of Health, on 10/13/2020 the Authority reiterated the information requirement.

12. On 21/10/2020 the complainant submitted a letter indicating that he wanted to withdraw his complaint.

13. On 23/11/2020 the Department of Health responded to the request, providing a copy of the HC3 access log of the person making the complaint in the period between May and December 2018. In this record does not include any access carried out by the doctor identified by the reporting person as the alleged author of the improper access; nor is there any access made from any health center dependent on the ICS.

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 antecedents section, it is necessary to analyze the reported facts that are the subject of the present archive resolution, specifically the alleged unjustified access to the medical history of here reporting in the period between May and December 2018 and the subsequent disclosure to third parties of the data consulted.

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As detailed in the antecedents, at the request of this Authority the CASPBE - entity to which the CAP Casanova depends and of which the complainant here is a user - has justified each of the accesses that appear in its clinical history of the complainant, from the who is responsible for this entity.

On the other hand, it has been established - by means of the HC3 access register provided by the Department of Health - that the complainant's HC3 was not accessed from any of the centers dependent on the ICS.

In addition to the above, it should be emphasized that, according to what is contained in the analyzed records (CASPBE HC register, and Health Department HC3 register), none of the accesses were made the medical professional identified by the reporting person as the author of the alleged improper access.

Ultimately, according to the information contained in these actions, it must be concluded that in the analyzed period: a) the access carried out to the HC of the CASPBE by personnel in its service were fully justified; b) that there is no access to the complainant's HC3 carried out from any health center dependent on the ICS (neither those indicated by the complainant, nor any other); and, c) that neither the HC of the CASPBE, nor the HC3, records any access carried out by the practitioner indicated by the person making the complaint.

Having said that, and with regard to an eventual disclosure of data, it must be said that there is no element, not even an indication, that allows us to infer that personnel who provide service to the CASPBE have violated the duty of confidentiality in relation to the data that are recorded in the medical history of the complainant, so 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 regardless of the fact that the person making the complaint subsequently requested to withdraw his complaint, given that during the actions carried out in the framework of the previous information, no fact has been proven, in relation to the events reported, that could be constitutive of any of the infractions provided for in the legislation on data protection.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 175/2020, relating to the Barcelona Esquerra Primary Health Care Consortium and the Catalan Health Institute.

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2. Notify this resolution to the Barcelona Esquerra Primary Health Care Consortium, the Catalan Institute of Health 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, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,