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File identification

Archive resolution of the previous information no. IP 182/2020, referring to Opening, Association Catalan for the Fight against Stigma in Mental Health

Background

1. En data 29/06/2020 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per trasllat de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava denúncia contra diverses entitats amb motiu de various alleged breaches of the regulations on personal data protection. This letter was supplemented by a later one dated 08/19/2020. Among others, the complainant (Mr. (...)) complained that *"in the week of 14/11/2019"* a person who claimed to call from the Catalan Health Service (hereinafter, CatSalut) , he called the landline at his home and *revealed "a su madre y family that picked up the phone"* that the complainant here was a patient of a mental health center at the time, given that according to the complainant these family members did not know. The complainant indicated that CatSalut had tried to make the call to the Dreta-Eixample Mental Health Center responsible for the call, but that he questioned the eventual responsibility of this Center since the caller, according to the complainant, left of course he was doing it on behalf of CatSalut.

In order to prove this fact, the complainant provided a copy of the email that had been sent to him on 12/02/2020 by the CatSalut Citizen Management Department, through which he responded to the claim that the complainant here would have made before this entity for the same facts that are the subject of a complaint before this Authority, in the following terms:

"In relation to your claim in which you refer to the violation of your privacy through a telephone call from CSMA Dreta-Eixample, we inform you that:

The CatSalut User Management Division has noted that an error occurred when indicating where the phone survey was being called from and has contacted the center in order to prevent it from repeat this type of situation again.

It has been verified that the phone listed on your record as insured is your home phone. In order to modify this data and for the communication to be directly with you, we offer you to send us your mobile phone, through this web form.

From the User Management Division they will contact you in order to modify this data and avoid having to do it in person at your Primary Care Centre.

They are very sorry for the inconvenience this may have caused and arrangements are being made opportune so that these events do not repeat themselves".

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2. The Authority opened a preliminary information phase (no. IP 182/2020), 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 10/29/2020 the Center Psicoterapia Barcelona SA (hereinafter, CPB) - entity that manages the Dreta Eixample Mental Health Center - was required to report if a person employed by mental health center had made the disputed call object of complaint; and, in the event of an affirmative answer, state the reasons and circumstances that would have justified the disclosure of the information relating to the complainant to the family members who answered the call.

4. On 11/11/2020, the CPB responded to the aforementioned request in writing in which it reported the following:

- That, *"having made the relevant inquiries in collaboration with the administrative and assistance managers of CSM Dreta-Eixample, it is not known that any worker or collaborator of Center Psicoterapia Barcelona, SA has made a telephone call with characteristics similar to the denounced by the interested party"*.
- That *"in addition, it has been verified that the administrative department of care for the user of the Center in question does not have the telephone number to which, according to the complainant, the call that motivated the complaint was made of the interested party (93 ...). This telephone number is also not included in any other file owned by Center Psicoterapia Barcelona, SA"*.

5. In view of the above, on 19/11/2020 CatSalut was required to answer several questions relating to the events reported, specifically:

- Details of the actions carried out by the User Management Division of CatSalut that allowed them to verify, in accordance with what was specified in the email that was sent here reporting on 02/12/2020 (transcribed in the 1st antecedent) that *"an error occurred in the "indicate from where the phone survey was called and the center has been contacted in order to prevent this type of situation from happening again"*.
- Indicate the center from which, according to the investigations carried out by the Division of User Management, the call object of the complaint was made.

6. On 14/12/2020, CatSalut responded to the previous request in writing in which it informed that the call object of complaint had been made from the entity Obertament Associació Catalana per a la Lluita contra l' Stigma in Mental Health (henceforth, OPENLY), which was *"the promoter of the assessment/survey"* on

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the stigmatization of patients with mental health problems, in the context of which the said call had been made.

7. On 17/12/2020 the entity was required OPENLY, in order to comply with the following:

- Indicate the circumstances and in what condition OPENLY he would have accessed the data of the complainant as recipient of the survey on stigmatization of people with mental health problems, being a user of a mental health center in the framework of the public provision of health services.
- Confirm whether any employee/collaborator of OBERTAMENT, in the week of 14/11/2019, disclosed by telephone to any person in the family environment of the complainant that he was a user of a health center mental. If you answer in the affirmative, indicate the reasons why such information would have been provided to a person other than the affected person.
- Report if OPENLY has any protocol or instruction addressed to its employees or collaborators in relation to the processing of data in the context of telephone calls intended for users of the public health system.

8. On 01/22/2021, OBERTAMENT answered the previous request in writing in which it reported the following:

- That *"scientific literature confirms that the prejudices present among health professionals affect the treatment received by patients with a psychiatric diagnosis and, therefore, the quality of care"*, and that it was under this premise that *"together with the Department of Health developed an anti-stigma intervention aimed at professionals in this field. The intervention is part of the Comprehensive Care Plan for People with Mental Disorders and Addictions of the Generalitat de Catalunya"*.
- That *"during the development process of the intervention, the possibility arose to include a question within the survey system to assess the quality of the service and the degree of satisfaction of the users. The question is: "How willing is the professional who attends you to respect the decisions you make?". The hypothesis is that this question would help to monitor the degree of paternalism and meddling of the professionals. To validate the question and verify its psychometric properties, it was necessary to test it on a randomized group of patients from Adult Mental Health Centers"*.
- That *"to carry out the validation from Catsalut, a work system was defined and two people from the Obertament technical team were trained: the one who made the calls and the entity's project manager"*.
- That *"Catsalut sent our organization the name, surname and telephone number of the sample. The calls were made following the instructions and directions given"*

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by Catsalut They were done by connecting to a Catsalut IP switchboard, which was the one that actually contacted the patient's phone."

- That, indeed, *"the call to the user's phone was made. The person responsible for making the calls does not remember the incident. It turns out that he no longer works for us (...). In the time he worked for us, he proved to be a good professional and to be sensitive to our mission (...)"*.

- That OPENLY *"it does not include telephone calls to users of the public health system as part of its ordinary activities, so it does not have a specific protocol of its own. For the calls made as part of the project, the professional followed the protocol and instructions defined by Catsalut (appendices 1, 2 and 3), of which he also received training, as well as the obligations defined in the Obertament security document for all users who process personal data (annex 4), and which workers sign when formalizing their employment contract"* a copy of which was signed by the professional who would have done the call and that is available to the Authority.

Along with his letter, he OPENLY provided the following documentation:

- a) Annex 1, document entitled *"Procedure for carrying out satisfaction surveys from the centres"*, which contains the Catsalut-Department of Health logo. In this document, in the section *"instructions for surveyors"*, the following instruction is given, among others: *"Ask to always speak to the person on the list (read the user's first and last name)"*.
- b) Annex 2, document entitled *"Conducting surveys of perception, experience and satisfaction from the centers"*, which includes the CatSalut-Department of Health logo.
- c) Annex 3. Document entitled *"Conducting telephone surveys"*.
- d) Annex 4. Document on *"Protection of personal data"* that must be signed by the employees of OBERTAMENT, and in which section entitled *"Duty of confidentiality and secrecy"*, the following is specified: *"It is not will communicate personal data or any personal information to third parties. Special attention will be paid not to divulge protected personal data during telephone consultations, e-mails, etc."*

9. In view of the information provided by OBERTAMENT, on 03/02/2021 CatSalut was again required to comply with the following:

- Indicate on which date, at least approximately, CatSalut communicated to OBERTAMENT, as part of the collaboration to carry out the survey, the data of the users - including those of the reporting person - that were part of the sample (name, surname, telephone and the fact that they were users of a mental health center).
- Information on the legal basis that would have legitimized the communication of data by CatSalut to OBERTAMENT. In the event that the communication derives from the existence of a data processor contract, a copy of it shall be provided.

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10. On 02/15/2021, CatSalut responded to this last request, and in its letter stated the following:

- That the telephone number to make the call was made available to OPEN during the period September-October 2019.
- That CatSalut did not sign with OBERTAMENT *"an express and written contract, but it was a verbal order. We are aware of the need to collect these verbal orders in writing, but the circumstances of the moment meant that the verbal order was considered sufficient. In any case, we consider that the legal basis is in accordance with article 6.1 e) to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the data controller. In this case, it is OPENLY understood that he would have acted on behalf of CatSalut"*.
- That *"in this case, we recognize that the need to formalize the data processor contract between CatSalut and Obertament in writing was omitted."*

11. Based on the antecedents that have been related and the result of the investigative actions carried out within the framework of the previous information, as of today, in addition to the present archive resolution, it is also issued an agreement to initiate disciplinary proceedings against CatSalut regarding the non-formalization of a data processor contract.

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.

As stated, the complainant complained that a person who claimed to be calling on behalf of CatSalut, had revealed *"to his mother and family who picked up the phone"* that the complainant at the time was a patient at a mental health, since according to the complainant these relatives were unaware. This call would have been made to the complainant's home landline in the week of 11/14/2019.

In the context of this previous information, it has been established that this call was made by staff from the OBERTAMENT organization as part of a survey commissioned by CatSalut. He has OPENLY admitted making the call, but not disclosing the details here

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reporting to his relatives, as he claims that the person who did it does not remember this "incident".

We are therefore faced with contradictory versions regarding the content of the call that he OPENLY admits to having made to the complainant's home, specifically as to whether to reveal to his relatives who answered the call - according to the complainant - that he was a user of a mental health center. In this regard, it should be noted that, aside from the statements of the complainant here, there is no evidence available to corroborate that the call had been answered by these relatives, nor that in the context of this call the staff of OBERTAMENT revealed the disputed information. In addition, it must be shown that in this case it must be ruled out that an error or confusion occurred on the part of the OBERTAMENT person who made the call, when identifying the receiver of the same (the complainant, as a member of the survey sample), since the person who looked after her - according to the complainant - would have been her mother. And finally, it cannot be overlooked that it cannot be ruled out that these relatives of the complainant, who apparently lived with him, knew through another source or medium that he was a user of a mental health center.

Consequently, the principle of presumption of innocence is applicable here as there is no evidence to prove the reported data disclosure, and therefore, the commission of an offense by OBERTAMENT. In this sense, article 53.2.b) of Law 39/2015, of October 2, 2015, recognizes the right *"To the presumption of non-existence of administrative responsibility until proven otherwise"*.

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 previous information actions number IP 182/2020, regarding Obertament, Catalan Association for the Fight against Stigma in Mental Health.
2. Notify this resolution to Obertament, Catalan Association for the Fight against Stigma in Mental Health and to the person reporting; and communicate it to Center Psicoterapia Barcelona SA.
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.

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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,