

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

File identification

Archive resolution of the previous information no. IP 182/2020, referring to the Consorci Sanitari de Barcelona and the Center Psicoterapia Barcelona, SA

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 the Consorci Sanitari de Barcelona (hereafter CoSB), on an undetermined date, but in any case after June 2018, provided the CSM Horta-Guinardó -public health center, managed by the Horta Guinardó Mental Health Association (hereinafter ASMHG)-

clinical documentation relating to his mental health, documentation that would come from the Center for Mental Health Dreta-Eixample - managed by the Center Psicoterapia Barcelona, SA (hereinafter, CPB)-. According to the complainant, he had been a patient at CSM Horta Guinardó until June 2018, when he himself requested the change to CSM Dreta-Eixample because he was not satisfied with the care provided; and that it was as a result of the complaint he made against that center for medical malpractice that the CoSB provided the aforementioned documentation to CSM Horta-Guinardó, and this with the purpose of covering up the reported malpractice.

The reporting person provided various documentation relating to the events reported.

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 21/09/2020 the CoSB was required to report if at any time it had received clinical documentation relating to the mental health of the person reporting, from the CSM Dreta Eixample ; and, if you answer in the affirmative, indicate whether you had provided said documentation to CSM Horta-Guinardó from June 2018, and, if applicable, the circumstances that would have led to this communication.

4. On 05/10/2020, the CoSB responded to the aforementioned request through a letter in which it set out the following:

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

- That the CoSB, *"within the scope of the city of Barcelona, exercises the functions that the Catalan Health Organization Law (LOSC) attributes to the health regions of CatSalut"*.
- That the complainant *"was treated for the first time in 2014 at the Center for Mental Health of Adults (CSMA) Horta-Guinardó"*.
- That *"on June 19, 2018, the patient (...) requested a change of center. Previously (2017), the doctor who attended Mr. (...) had been changed, at his request"*.
- That *"the CSMA Dreta - Eixample is interested in being provided with information regarding the type of patient who has requested the change of center, as well as the reasons that would justify the said change of center"*.
- That, *"on June 26, 2018, the managers of the CSMA Horta-Guinardó will issue an evaluation report on the patient (...) as well as the reasons that would justify the change of center (distrust of the patient towards all the center's professionals)"*
- What. *"given that the two CSMA's mentioned are mental health provider centers of CatSalut, the CSMA Horta-Guinardó transfers the report prepared to the CSMA Dreta-Eixample, in order to guarantee the continuum of care for the patient. A copy of the said report is delivered to the DACiP of the CSB which is filed in the file of Mr. (...)"*.
- That *"currently the patient (...) is being treated at the CSMA Dreta-Eixample"*.
- That the information in the possession of the CoSB, regarding the reporting person, *"comes from the CSMA Horta-Guinardó drawn up to guarantee the continuum of care, based on the request to change center made by the patient himself and at the request of the CSMA Dreta center – Eixample as the recipient of the patient of constant reference. These are two CatSalut supplier centers"*.

5. On 10/29/2020, the CPB (entity that manages the CSM Dreta Eixample) was required to report whether clinical documentation relating to the mental health of the person reporting to the CSM had been provided by said CSM Horta-Guinardó (centre of which he had been a patient until June 2018).

6. On 11/11/2020, the CPB responded to the aforementioned request through a letter in which it informed that *"it is not known that Center Psicoterapia Barcelona, SA has communicated data of the interested party from CSM Dreta-Eixample at CSM Horta-Guinardó, center where the person concerned had previously been treated. The fact that data has not been communicated between the CSMs has been able to be determined in consultations with the care director and with the reference professional of the Dreta-Eixample CSM"*.

7. On 11/23/2020 and still within the framework of this prior information phase, the ASMHG - entity that manages the CSM Horta Guinardó - was required to report whether, as of June 2018, from CSM Dreta Eixample they had been provided with clinical documentation relating to the complainant; and, in the event of an affirmative answer, report on the date of this communication, the specific information that was communicated; and the reasons that would have justified such communication.

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

10. On 02/12/2020, the ASMHG responded to the aforementioned request through a letter in which it informed that *"the CSMA Dreta Eixample has not provided us with any clinical documentation relating to the complainant"*.

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 explained, the complainant complained that the CoSB had provided, on an unspecified date, but in any case after June 2018, medical information relating to him to CSM Horta Guinardó. As indicated by the complainant, this medical documentation would come from CSM Dreta Eixample, the center of which he was a user from the date referred to until now.

In the context of this prior information, both the CoSB and the Dreta Eixample CSM (managed by CPB) have denied having provided clinical documentation regarding the complainant to the CSM Horta Guinardó (managed by the ASMHG). For its part, CSM Horta Guinardó has also denied having received any clinical documentation referring to the complainant from CSM Dreta Eixample.

We are therefore faced with contradictory versions between the one provided by the referred entities and the person making the complaint. In this regard, it should be noted that, apart from the statements of the complainant here, there is no element that corroborates the reported communication of information referring to his person, from the CSM Dreta Eixample (managed by CSB) or from the CoSB, at CSM Horta Guinardó (managed by the ASMHG).

Consequently, the principle of presumption of innocence is applicable here as there is no evidence to prove the reported communication of data, and therefore the commission of an offense by the CoSB or the CPB. 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 since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

that have been addressed in this resolution, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is appropriate to agree to its archive.

Therefore, I resolve:

1. File the previous information actions number IP 182/2020, regarding the Consorci Sanitari de Barcelona and the Center Psicoterapia Barcelona, SA
2. Notify this resolution to the Consorci Sanitari de Barcelona, the Center Psicoterapia Barcelona, SA 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, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,