

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

File identification

Archive resolution of the previous information no. IP 392/2020, referring to the Catalan Health Institute.

Background

1. On 12/12/2020, 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 personal data protection.

Specifically, the complainant (Mr. (...)) complained of alleged improper access to his medical history, specifically, certain accesses carried out on June 10 and 11, 2019 from the care centers primary (...) and (...), centers with which the complainant claimed not to have any healthcare relationship.

2. On 01/27/2021, the complainant supplemented his complaint by providing the following documentation relating to the events reported:

a) Copy of what appears to be the log of accesses to your cynical primary care history, in which the following accesses subject to complaint are observed:

Date of access	Name of the center	Professional category	module	justification
10/06/2019 13:34	NO (...)	FAMILY MEDICINE PRSFG320-	New Follow-up	Yes
10/06/2019 13:36		NURSE	PRSFG320-New Tracking	Yes
10/06/2019 13:42	NO (...)	FAMILY MEDICINE PRSFG320-	New Follow-up	Yes
10/06/2019 13:43	NO (...)	FAMILY MEDICINE PRSFG832-	LOAD_PROGRAMS	Yes
10/06/2019 13:43	NO (...)	FAMILY MEDICINE PRSFG832-	FULL MONITORING FROM	Yes
10/06/2019 13:43	NO (...)	FAMILY MEDICINE PRSFG832-	LOAD_PROGRAMS	Yes
10/06/2019 13:43	NO (...)	FAMILY MEDICINE PRSFG832-	CONTINUE	Yes
11/06/2019 12:29	(...)(...)(...)	NURSE	PRSFG320-New Tracking	Yes
11/06/2019 12:42		NURSE	PRSFG320-New Tracking	Yes
11/06/2019 12:58		NURSE	VISFG202-VISITS CANCELED of ONE USER	Yes

b) Office that from the Lleida Primary Care Center of the ICS went to the complainant here on 04/12/2020, informing him that all accesses were justified.

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

3. The Authority opened a preliminary information phase (no. IP 392/2021), 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.

4. In this information phase, on 08/02/2021 the reported entity was required to report on the justification of the accesses subject to the report detailed in the 2nd antecedent.

5. On 12/02/2021, the ICS responded to the aforementioned request through a letter in which it explained that the accesses subject to complaint (made on June 10 and 11, 2019 from the attention centers primary (...) and (...)) were carried out in order to give response to the previous access request made by the complainant on 05/23/2019, in which requested access to the traceability of his medical history between 1/06/2018 and 23/05/2019. Thus, the accesses subject to the complaint were carried out by the people who, at the time of resolving that access request, were in charge of each of the CAPs, with the purpose of making the assessments on traceability that had been requested.

Along with its letter, the ICS provided a copy of the letter that the entity had sent to the complainant on 17/06/2019, responding to its request for access of 23/05/2019 . This response included a list with the justification of the accesses to his medical history in the requested period (from 1/06/2018 to 23/05/2019), which included some carried out since CAP (...) and from the CAP (...) (specifically, in the months of June and September 2018), and which had been the subject of analysis.

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 background story, it is necessary to analyze the facts reported that are the subject of this file resolution.

The complainant complained of alleged improper access to his medical history, specifically, of the accesses carried out between June 10 and 11, 2019, from

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

of the CAP (...) and CAP (...), centers with which, as he indicated, he had no healthcare relationship.

Well, as explained in the background, the reported accesses - carried out on the 10th and 11th of June 2019 - would be justified, since they were carried out by the direction of each of the CAPs in order to respond to the request that the complainant had previously made on 05/23/2019, in which he requested access to the traceability of his history between 06/01/2018 and on 05/23/2019. To respond to that request for access, the ICS analyzed the accesses that occurred during that period, among which there were those made from the CAP (...) and from the CAP (...).

As things stand, there is no indication that the accesses complained of were unjustified, on the contrary, the ICS has given a reasoned and reasonable explanation of the justification thereof. Consequently, the principle of presumption of innocence provided for in article 53.2.b) of Law 39/2015, of October 2, 2015, which recognizes the right *"To the presumption of non-existence of administrative liability as long as the contrary is not proven"*.

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.

Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure:
b) When the facts are not proven "

Therefore, I resolve:

1. Archive the actions of prior information number IP 392/2020, relating to the Catalan Institute of Health.
2. Notify this resolution to the Catalan Institute of Health 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] interpose, with discretion,

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

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 provisions of 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.

Equally, interested persons may] file any other appeal they deem appropriate to defend their interests.

The director,