

File identification

Archive resolution of the previous information no. IP 26/2021, referring to the Catalan Health Institute (CAP Blanes)

Background

1. On 01/20/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Catalan Health Institute (CAP Blanes), on the grounds of a alleged breach of the regulations on personal data protection. The complainant stated:

- That on 04/30/2020, he attended CAP 2 in Blanes at 8:00 a.m. to carry out the COVID-19 detection test and that, although his CAP was that of Palafolls, she was cited in that center since it was located in the town where she worked.
- That at 8:20 (approximately) he was given a sheet with the (negative) result.
- That on 05/07/2020 he accessed "La Meva Salut" (page of the Department of Health through which citizens can consult their clinical data) and verified that it had been accessed up to eight times from CAP Blanes in his clinical history, three accesses on 04/30/2020 and five accesses on 05/04/2020.

And based on the facts presented, he requested:

"I would like to know who was the person who made the inquiries, the reason why the inquiries were made, what was consulted and what was done with the information consulted, given that my proof of Covid-19 was negative, and there is no reason for my medical records to be consulted, nor have I been asked for permission to do so.

I don't know if they can consult my health data from a CAP that is not my reference, and even more so if I was only tested.

I am attaching screenshots of my health profile and the COVID 19 test."

To prove the facts related, the reporting person provided the screenshots of his profile in 'La Meva Salut' in relation to the reported accesses and the result of the COVID-19. Regarding the accesses, there were eight accesses from the Blanes CAP, three carried out on 04/30/2020 (at 11:21 a.m., 11:30 a.m. and 12:16 p.m.) and five on 05/04/2020 carried out between 12:49 and 12:50 (which can be considered a single access since different screens are consulted consecutively).

2. The Authority opened a preliminary information phase (no. IP 26/2021), 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.

3. In this information phase, on 02/22/2021 the reported entity was required to provide information on who accessed, what professional profile they had and the reason justifying access.

4. On 03/03/2021, the Catalan Institute of Health (CAP Blanes) responded to the aforementioned request through a letter in which it stated that access to the medical history of the herein complainant of the days 04/30/2020 and 05/04/2020 were carried out by the same professional, in particular, a nurse from the CAP de Blanes 2 who performed the COVID-19 test on the complainant on 04/30/2020.

Likewise, he clarified that on 04/30/2020 this professional accessed the complainant's profile to register the result and that *"the computer system did not work quickly enough to register the results of these tests"*. And that, on 05/04/2020 he accessed again to verify that the result of the test carried out on 04/30/2020 was correctly recorded.

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 antecedents, it is necessary to analyze the reported event that is the subject of this archive resolution.

As indicated in the antecedents, the reporting person stated that on 04/30/2020 at 8:00 a.m. he had undergone a test to detect COVID-19 at the CAP Blanes, the center of which was not user and what he went to to locate this CAP in the population where he works.

And he complained of alleged improper access to his medical history from the aforementioned CAP Blanes, since having consulted the "La Meva Salut" portal, he had noted three accesses on the same day that the test was carried out, but hours later; and also five accesses on 04/05/2020, accesses for which I could not find an explanation.

In this regard, the first thing that should be highlighted is the detail of the eight reported accesses, which is as follows: three carried out on 04/30/2020 in the space of one hour (at 11:21 a.m., 11:30 a.m. hia at 12:16 h) and five on 05/04/2020 carried out between 12:49 and 12:50, which can be considered a single access since different screens are consulted consecutively.

Starting from here, it is necessary to analyze the justification of the accesses. In this regard, the ICS has reported the following: that all of them were carried out by the same professional - a nurse from CAP Blanes - who was the one who did the COVID test on the person reporting on 04/30/2020; that the three accesses on that same day were made with the purpose of entering the result of the COVID-19 test, which was attempted several times since the computer system was not working quickly; and, that on 05/04/2020 it was accessed in order to verify that the result had been entered correctly, precisely in view of the difficulties detected in doing so on the day of the test.

Therefore, based on the statements made by the ICS, it appears that the accesses were made by authorized personnel in the exercise of their functions, with the purpose of recording the result of the test to which the person had undergone reporting on 04/30/2020 - and which due to an IT irregularity led to several attempts - and also with the aim of verifying later (on 05/04/2020) the correct registration of the result.

In view of the above, it is considered that the reported accesses have not violated the data protection regulations, as it is a lawful treatment in accordance with article 5.1.a), in connection with the article 6.1.e) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers), which derives from the provision of public healthcare. At this point it is not superfluous to add that article 11.1 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy and clinical documentation, which regulates the use of the clinical history, foresees that *"1. The clinical history is an instrument primarily intended to help guarantee adequate assistance to the patient. For this purpose, the care professionals of the center who are involved in the diagnosis or treatment of the patient must have access to the clinical history"*; and in similar terms this use is regulated by article 16 of Law 41/2002, of November 14, basic regulation of patient autonomy and rights and obligations in the field of information and clinical documentation.

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 accordance 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: *"c) When the proven facts do not manifestly constitute an administrative infraction"*.

Therefore, I resolve:

- 1.** Archive the actions of prior information number IP 26/2021, 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 file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within the term



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of two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, interested parties can file any other appeal they consider convenient to defend their interests.

The director,

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