

File identification

Archive resolution of the previous information no. IP 44/2021, referring to the Mutual Aid Foundation of Terrassa.

Background

1. 01/30/2021 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Terrassa Mutual Aid Foundation (hereafter FAMT), on the grounds of an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant ((...)) explained that on 04/10/2019 he had been treated at the Adult Mental Health Center (CSMA) of the CAP of Sant Cugat del Vallés -managed by the FAMT-, and that in that visit, apart from his doctor, there was another person *"not directly related to the healthcare act". " _ by the established protocols"*, and that in the face of this answer he decided *"not to enter into a conflict without having or confirming the regulations corresponding to the situation produced"*.

Along with his complaint, the person making the complaint provided, among other things, the following documentation:

a) Copy of the letter of complaint that he submitted on 01/23/2020 to the CAP of Sant Cugat, setting out the same facts that are the subject of this complaint, with the following text: *"During a scheduled visit with the psychiatrist (...) upon entering his office [the doctor's] I notice the presence of a young lady sitting in a corner. Let's start the session, I tell Dr. about the young woman's assistance, simply answering that she is a student, to which I reply about my acceptance in this regard and to which Dr. he answers that the CSMA St. Cugat belongs to the Terrassa Mutual University Hospital (...) I decide not to oppose to avoid conflicts"* .

b) Copy of the letter of 20/02/2020, through which the FAMT responded to the claimant here, informing him that, having transferred his complaint to the psychiatrist who treats him (Dr. (. .)), he had reported that *"the person who attended his visits for teaching or training purposes was not a medical student, but a resident doctor, and therefore subject to professional secrecy and the duty of confidentiality (. .)"*.

2. The Authority opened a preliminary information phase (no. IP 44/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 02/23/2021 the reported entity was required to answer several questions relating to the reported facts.

4. On 10/03/2021, the FAMT responded to the aforementioned request through a letter in which it stated the following:

- That in the letter of response to the complaint that the complainant presented to the FAMT on 01/23/2021, he was informed that the person who had been present during the visit together with Dr. (...) she had been a resident doctor. That this information was given assuming that the complainant here was referring to the last day of consultation, since in his complaint he did not indicate which specific day he was referring to.
- That in view of the fact that the Authority's request did specify the day of the consultation that was the reason for the complaint, the calendar has been reviewed and it has been established that the person who would have been present at the consultation on that day was a 4th year student of Medicine at the University of Barcelona.
- That the presence of this student *"derives from the concert signed by FAMT with the UB on 09/01/18, within the legal framework of Royal Decree 1558/1986, of June 28, which establishes the general bases of the regime of concerts between Universities and health institutions in order to collaborate in the training of students in Health Sciences, which is part of the relationship between our organization and this student"*.
- That the student who accompanied Dr. (...) was *"properly identified with the corresponding identification card. It is true that, despite initially showing reluctance to the student's assistance, the patient finally gave his verbal consent, although in his complaint he expressed it as a mere "non-opposition"*.
- That, therefore, *"the entity has complied with the obligations of information and request for consent, in accordance with what is foreseen in the RGPD [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] , in article 5 of Order SSI/81/2017 of January 19 of the Ministry of Health, Social Services and Equality, and in clause 4.1.3 of the Charter of Rights and Duties of Citizens in relation to health and health care"*.

The reported entity attached various documents to the letter, among others, a document signed on 01/10/2019 by the student of Medicine who was present at the controversial visit together with Dr. (...) on 04/10/2019, by which he undertakes to respect the organization's regulations in relation to the use of information systems and the confidentiality of data.

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 Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

2. Based on the background story, it is necessary to analyze the reported fact that is the subject of the present filing resolution.

The complainant complained about the presence of a person, who accompanied the attending physician, during the psychiatric medical visit he attended on 04/10/2019 at the CSMA . He claimed that at that time he warned the doctor about the need to obtain his consent in order for that other person to be present in that healthcare act, that the doctor told him that the presence of this person was allowed "by the established protocols" , and that in the face of this answer and "to avoid conflicts", he did not object to his presence.

For its part, the FAMT has informed, in response to this Authority's request, that the person present was a medical student from the University of Barcelona, within the framework of the agreement that this University has with the FAMT for the training of students in Health Sciences; that this person was properly identified by means of a card; and that, although the person making the complaint was at first reluctant to his presence, he finally did not object when he was informed of the reason for his presence. In summary, the FAMT invokes the concurrence of the consent of the person reporting here to legitimize the presence of this student in the controversial visit.

It is an unquestionable fact that the person accompanying Dr. (...) - a medical student from the UB -, with her presence during the visit, could have access to the health data of the complainant here.

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based, one of them being the consent of the affected person (letter a).

Nevertheless, for the treatment of health data (art. 4.15 RGPD) to be lawful, it is not enough for the concurrence of a legal basis in article 6 of the RGPD, but in accordance with the art. 9.1 and 9.2 of this rule must meet a circumstance that lifts the prohibition of processing this category of data. Thus, article 9 of the RGPD provides that:

"one. remain data processing is prohibited _ personal information that reveals ethnic or racial origin, opinions policies , convictions religious or philosophical , or union affiliation , and data processing genetics , data biometric aimed at uniquely identifying a natural person, data related to health or data relating to the sexual life or sexual orientation of a natural person.

2. Section 1 will not apply when one of the circumstances occurs following :
a) the interested party gave his explicit consent for the processing of said personal data for one or more of the specified purposes, (...)"

With regard to the provision of consent in relation to the presence of students in care processes, it is of particular interest what is provided for in the Order of the Ministry of Health, Social Services and Equality SSI/81/2017 , of 19 January , which approves the protocol through which basic guidelines are determined to ensure and protect the patient's right to privacy for students and residents in Health Sciences, Protocol dictated, as provided in its 3rd section, in connection, among other rules, with Law 14/1986, of 25 April, General of Health (arts. 10 and 104), Organic Law 15/1999, of 13 December on the protection of personal data (art. 7) - valid at the time when said order was approved , and Law 44/2003 of November 21, on the regulation of health professions Title II). This Protocol establishes the following:

"2. Scope of application

The action guidelines of this protocol will be applied to centers of the National Health System (SNS), to the centers / and entities deprived of character sanitary that, through concert or bass any indirect management formula collaborate with the SNS in care , teaching or research , as well as other entities sanitary private accredited for training in Health Sciences .

(...)

5. Guidelines for action in relation to the presence of STUDENTS of degrees related to health sciences in the processes assistance .

5.1 Will have consideration of students :

a) University students of qualifications that enable them to practice professions sanitary Graduated and regulated in Health Sciences : Medicine, Pharmacy , Dentistry , Nursing , Physiotherapy , Occupational Therapy , Podiatry , Optics- optometry , Speech therapy , Dietitians Nutritionists , General Health Psychology .

(...)

5.2 The patients have right to know what is students in training present in their process care .

The management of the Health Center (and not the university , school or training center of origin) will provide them with an identification card that will be placed in a visible place on the uniform containing the data personal information , photograph and express reference to the group to which the student belongs among those mentioned in point 5.1, in order to facilitate their recognition by the users and professionals of the center.

(...)

*5.3 With character prior to the start of the event care the professional responsible for it (specialist of the unit , tutor or resident authorized by his guardian) **will inform the patient or his representative on the presence of students, requesting his verbal consent to witness the proceedings clinics .***

In accordance with the provisions of article 7.3 of the LOPD in relation to article 8.1 of the LBAP [Law 41/2002 , of November 14 , basic regulation of patient autonomy and rights and obligations regarding information and documentation clinic], in the event that the patient refuses , the staff in training will not be present in the care process care (...)"

From the statements made by the person making the complaint in the various documents contained in the proceedings (the complaint before this Authority and the complaint made before the FAMT), it is clear that he consented to the presence of the student once his doctor explained to him that this was foreseen in the protocols and linked to the training of the University's medical students. For its part, the FAMT acknowledges that although at first the complainant was reluctant, after informing her and justifying the student's presence, the complainant here agreed to be present at the medical visit..

That's how things are, to the extent that the complainant here would have verbally agreed to the medical student being present at the care event and that there is no element from which it can be inferred that the FAMT did not inform him of the free character that such acceptance had to have, it must be concluded that in the case at hand, the access to the health data of the complainant here by a student in training as part of a visit medical was not contrary to the data protection regulations, given the concurrence of the legal basis established in article 6 of the RGPD, together with the exception provided for in article 9.2.a) of the same rule, in connection with the provisions of the Protocol approved by the Order of the Ministry of Health, Social Services and Equality SSI/81/2017),

Having said that, it would be advisable, in anticipation of possible discrepancies that may occur in the future regarding the effective provision of consent (a situation that, as has been explained, does not occur in the present case), and as long as this is feasible, said consent is obtained (either from the patient himself or, in certain circumstances, from the people linked to the patient -section 5.3 of the Protocol approved by order SSI/81/2017-) in writing or another system that allows the your accreditation

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 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, 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 *"a) The non-existence of facts that could constitute the infringement"*.

Therefore, I resolve:

1. Archive the previous information actions number IP 44/2021, relating to the Mutual Aid Foundation of Terrassa.
2. Notify this resolution to the Mutual Assistance Foundation of Terrassa 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 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, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,