

File identification

Archive resolution of the previous information no. IP 45/2021, referring to the General Directorate of Personal Autonomy and Disability of the Department of Social Rights of the Generalitat.

Background

1. On 30/01/2021, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the then Department of Work, Social Affairs and Families of the Generalitat (now Department of Social Rights) , due to an alleged breach of the regulations on the protection of personal data.

The complainant stated that the processing of his request for recognition of the dependency situation and the right to benefits had violated his right to data protection for several reasons:

- 1.1. Firstly, it stated that the fact that the diagnosis related to the dependency situation had to be specified in the application form - together with the code corresponding to this diagnosis - meant that this had been revealed to all the people who had processed his request, when according to his opinion it was sufficient to indicate the code of the diagnosis.
- 1.2. Secondly, he stated that the duty of confidentiality was violated due to the fact that his health data had been circulated by different external entities, adding that a social worker from the Department had also accessed it.
- 1.3. Thirdly and lastly, he made a series of complaints about the assessor who came to his home to assess his degree of dependency.

2. The Authority opened a preliminary information phase (no. IP 45/2021), 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, and in response to a request for information from this Authority on various issues, on 05/14/2021 the Department of Social Rights presented a letter, accompanied by various documentation, in which it set out, in summary, the following:

- That *"The application form includes a health report in which the general practitioner or specialist of the person requesting access to the dependent care system must note the diagnoses and their ICD-10 (International Classification of Diseases) coding, and fill in the box with the description and diagnosis code. This information is included in the form with which the assessment team carries out its task of assessing the dependency situation of the applicant "*.
- That the form *"contains the explicit consent of the applicant for the processing of special categories of data"*.

- That the treatment is covered by the legal basis provided for in article 6.1.e), in relation to article 9.2.a) - regarding the treatment of health data-, both 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 circulation thereof (hereafter, RGPD).
- That the collection of health data is provided for in article 27.5 of Law 39/2006, of December 14, on the promotion of personal autonomy and care for people in a situation of dependency, which provides that: "*The assessment must be made taking into account the corresponding reports on the person's health and on the environment in which they live, and considering, where appropriate, the technical aids, orthoses and prostheses that have been prescribed.*"
- That Royal Decree 174/2011, of February 11, which approves the assessment scale for the dependency situation established by Law 39/2006, regulates in Annex III the instructions for the application of assessment scale for degrees and levels of dependence (BVD), and its point 3 describes the scale, and refers to health reports and diagnoses, as follows:

"(...) The application of the BVD is carried out using four procedures to obtain the information:

- *Health reports and the environment of the person to be assessed.*
- *The interview*
- *Observation and direct verification.*
- *The application of tests in a structured context.*

The health and environment reports constitute the starting point in the assessment process insofar as they allow examination of the person's health conditions that may affect their functioning in activities of daily living, as well as the context (environmental and personal) in which these develop.

The review of the health report must be done prior to the assessment, in order to know and analyze the health conditions that the person alleges as a potential cause of the state of dependency. The reading of the health report(s) must be done critically, with the aim of noting and knowing the most important aspects that must be taken into account for the assessment. These should include:

- *Analyzes of health diagnoses that give rise to permanent deficiencies, and therefore without the possibility of improvement (...)*
- *Analyzes of health diagnoses that give rise to a stable state with the possibility of improvement (...)*
- *Analyzes of diagnoses that occur due to outbreaks (...)"*

- That when a request is received, it is sent to INDRA, which acts as the person in charge of the treatment, and "*manages the administrative files of dependency. The company's staff enter the requests into the computer application, make the information requirements if necessary and scan the information into the application (...)* Once the requests are entered, they are sent to the *Public Sector Dependency Assessment Services of the Generalitat*" , with whom the Generalitat has signed collaboration agreements for the

assessment of the dependency, and perform the functions and tasks provided for in the Resolution of 04/02/ 2010 of the General Secretariat of Social Policy and Consumption, by which the Agreement of the Territorial Council of the System for Autonomy and Care for Dependency is published, in the matter of bodies and procedures for assessing the situation of dependency (BOE 62, of 12/03/2010).

- That home visits are not medical visits, but visits to assess the dependency situation, and that currently the assessment staff in Catalonia are qualified in one of the following degrees: nursing, occupational therapy, physiotherapy, psychology or social work.

4. On 07/06/2022, the Authority made a second request for information to the Department of Social Rights, in order to provide additional documentation and information.

5. On 07/15/2022, the Authority received a response letter from the Department of Social Rights, in which it stated, among others, that "*the complainant submitted the request for the recognition of the situation of dependency, in paper format, in person, on date (...)/(...)/2020, being assessed on date (...)/(...)/2021 by the Assessment Service of the Department (SEVAD) of the Vic Hospital Consortium*".

It accompanied the written copy of the contract signed between the Department and INDRA BPO SLU, together with the technical clauses and the extension of the contract; as well as the collaboration agreement signed between the Department and the Hospital Consortium of Vic, together with the Addendum and the extension of the contract. And he indicated the points or annexes where the security measures established in the field of data protection were listed.

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 events that are the subject of this archive resolution.

2.1. On the inclusion of the diagnosis and the code in the request form for recognition of the dependency situation and the right to benefits.

As a preliminary matter, it should be pointed out that the information regarding the diagnosis of the person concerned who makes a request for recognition of the dependency situation (hereinafter, request for dependency) is not properly included in the form of application, but in the document attached to the application, entitled "*health report for the request for recognition of the dependency situation and the right to benefits*" (henceforth, health report).

This health report consists of three parts: the first, contains identification data of the person making the request; the second, contains data from the doctor or the person issuing the report; and the third, contains the diagnosis, assigned code, date and other health data.

Regarding the required code, at the foot of the health report it is clarified that this code corresponds to the International Classification of Diseases (ICD-10).

With regard to the reason why the diagnosis is collected when a request for dependency is made, it should be noted that the sectoral regulations that regulate the situation of dependency and the right to benefits (antecedent 7) establish that the diagnosis linked to the dependency status is the starting point in the assessment to be made by the competent administrative body on the dependency status of the person concerned. Specifically:

- Article 27.5 of Law 39/2006 establishes that the assessment of the dependency situation must take into account, among others, the health report of the person concerned.
- Royal Decree 174/2011 establishes in Annex III, section 3, regarding the dependency assessment scale (BVD), that this scale is determined based on various information, including the health report, and that this report constitutes, together with the analysis of the environment, the starting point in the assessment process. In this same section 3 the need to analyze the health diagnosis recorded in the aforementioned health report is emphasized, and in section 8 it is indicated that applications will have to be rejected based on the evolutionary moment of the illness alleged as a cause of dependency of the person to be assessed, referring to the diagnosis recorded in the health report. Thus, the diagnosis is necessary information to carry out the corresponding assessment of the dependency situation in one of the established degrees, and in its case access to economic benefits and social services.
- The Resolution of February 4, 2010, of the General Secretariat for Social Policy and Consumption, which publishes the Agreement of the Territorial Council of the System for Autonomy and Dependency Care, in matters of bodies and procedures for assessing the situation of dependency (BOE no. 62, of 03/12/2010), establishes the following at point 2 of its Annex, entitled "*Descriptive health report of the person's health condition, mandatory for assessment*":

c) Within the scope of the aforementioned agreement and in order to ensure a higher quality of information on the health condition of the person to be assessed, the report will consider the following indications:

Reference to the diagnoses of the pathologies that determine the health condition that limits the person's activity, coded in CIE 10 or in its default CIE 9 or CIAP, and if possible with indication of the year in which it was diagnosed, evolutionary phase in which there is a possible prognosis, as well as if your situation is stable or susceptible to modification by medical treatment (...)

With regard to the Administration competent to process and assess the dependency situation formulated by the person reporting, article 166.1.a) of the Statute of Autonomy of Catalonia (EAC) attributes to the Generalitat exclusive competence in the matter of social services, establishing that this includes the regulation and organization of the activity of social services, technical benefits and financial benefits for the purpose of assistance or complementary to other public provision systems.

In accordance with the above, the collection by the Department of Social Rights of the information relating to the diagnosis of the reporting person for the purpose of processing and assessing their dependency situation, is considered covered by the legal basis provided

for in article 6.1.e) of the RGPD, in relation to article 9.2.h) of the RGPD, as it is a treatment necessary for the exercise of public powers conferred on the person responsible for the treatment, and specifically and with regard to the treatment of health data, to be considered a necessary treatment for the provision of social assistance to the reporting person. In addition, given that the diagnosis is health data, and therefore forms part of the special categories of data, its treatment by the responsible unit (Directorate General of Personal Autonomy and Disability) for the purpose to manage the procedure of recognition of the dependency situation, it would also be protected by the consent of the interested person - here complainant - with the signature of the request (art. 9.2.a RGPD), as stated in the GDPR section of the application entitled "*Communication from the department to the applicant*", where the interested person is expressly informed that, by signing the application, he authorizes the unit responsible for the treatment of categories special data for the purposes indicated, which include the management of the procedure of recognition of the dependency situation.

Having said that, the reporting person complains about the fact that the diagnosis related to the dependency situation appears in the dependency request, or rather, in the health report attached to the request, next to the corresponding code , and this to consider that indicating the code would be sufficient, and that in this way the confidentiality of the diagnosis would be guaranteed, which is currently available to the people who participate in the processing of the request of dependency, and who have access to the health report.

With regard to this matter, and in particular to the codification to which the dependency request refers, the Authority has noted that on the website of the Catalan Health Service (CatSalut) of the Department of Health (<https://www.gencat.cat/catsalut/cim-10-mc-scp>), the fourth edition of the "*International Classification of Diseases 10th Revision Clinical Modification*" (hereafter CIM-10) published in 2021 by National Center for Health Statistics (NCHS), of the Department of Health & Human Services , of the states united of America (USA).

On this CatSalut website it is reported that, in Catalonia, and for what is now of interest, CIM-10 is the coding standard for the clinical -care data of the activity carried out in the health network of Catalonia and is part of the CatSalut catalog of diagnoses and procedures. It is also pointed out that it applies "*to the activity carried out in health, socio-health, mental health centers, hospital emergency services and primary care centers*".

It follows from its content that although i increase the number of diseases coded compared to the previous version (ICD-9), this is a limited or non-absolute classification, and that, despite the progress made with the 10th revision, does not include all the diagnoses that are carried out at present, so it is designed to expand and add new diseases or new classifications of them:

"In terms of diseases (it goes from 16,019 codes to 95,360), information relevant to ambulatory care is added, injury codes are expanded, combinations of symptom and diagnosis codes are created to reduce the number of codes needed to fully describe an affection, a sixth and seventh character is added, and laterality is incorporated into susceptible codes. On the other hand, the new structure allows for the future expansion of the classification."

"This fourth edition (...) contains the codes in effect for the American fiscal years 2020 and 2021 and 2 codes corresponding to FY 2022, which report on the sequelae of COVID-19 (...)."

So, in those cases where the information provided by the codes entered in the dependency request was not precise enough - in the sense that the coded diagnosis did not correspond exactly with the diagnosis made by the doctor in a given case -, it would be necessary the express indication of the diagnosis in the health report in order to fulfill the intended purpose.

On the other hand, it should be borne in mind that the indication of the specific diagnosis in the health report allows to verify the correctness of the code indicated in this report which will later be incorporated into the Department's database, and therefore becomes a system very useful for detecting, and consequently avoiding the entry of erroneous codes.

Equally, it should be taken into account that the express indication of the diagnosis can facilitate the understanding of the disease indicated by processing personnel who are not qualified in Medicine, and who need access to this information to fulfill the public functions entrusted to them.

Finally, the express indication of the diagnosis can also make it easier for the affected person who submits the dependency request together with the health report to understand it, who has the right to know the medical information relating to him/her which has been recorded in the attached health report, even as a guarantee of the exercise of other rights in the procedure for processing your request.

From the above it is concluded that the diagnosis is necessary information to make a correct assessment of the dependency situation - and in its case, of the recognition of the right to benefits -, and the express indication of the diagnosis in the report of health becomes something necessary to fulfill the stated purposes.

Another thing is the people or entities that can access the information about the diagnosis and other data recorded in the request and in the health report, as well as the security measures adopted to guarantee their confidentiality, these issues that the complainant has questioned mainly due to the fact that external entities intervene, and which are analyzed in the following heading.

2.2. On access to diagnosis and other information by the Department of Social Rights and external entities.

First of all, it should be noted that article 2.2. of Law 12/2007, of October 11, on social services, establishes that: *"the public system of social services is made up of publicly owned and privately owned social services accredited and coordinated by the Administration of in accordance with the provisions of this law. All these services together make up the public care network."*

With regard to the reason for the complaint referred to the fact that a social worker accessed the assessment report of the dependency of the person making the complaint, it should be noted that article 2.1 of Decree 115/2007, of May 22, by which the bodies of the Generalitat de Catalunya competent to apply Law 39/2006 are determined, it establishes that the Department competent in social services and the Catalan Institute of Assistance and Social

Services (ICASS) are competent to process, solve and notify the procedures of recognition of the dependency situation and determination of the corresponding services and benefits, and specifically, the competent administrative bodies are (art. 2.2) the People's Care Services of the Territorial Services of the Department competent in matters of social services .

More specifically, the Evaluation Commission is the body in charge of issuing a proposal for resolution of the degree of dependency, and, according to the information published on the website of the Department of Social Rights, this Commission is made up of a person representing the Territorial Services of the Department and by the consultant team of the Dependency Assessment Services -SEVAD-, and it is made up of professionals with various qualifications, including social workers. This shows that social workers from the Department of Social Rights participate in the procedure of recognition of the dependency situation.

Although the complainant has not identified the social worker, everything indicates that the person who would have accessed his assessment report would have been the social worker who participated in the assessment of his dependency situation. In such a case, in addition to considering that the access by this social worker would be legitimate due to the fact that it is necessary to carry out the corresponding assessment of the degree of dependence (and therefore the treatment would be covered by the legal basis provided for in the 'article 6.1.e of the RGPD, in relation to article 9.2.h of the RGPD), it must be taken into account that in the request for recognition of the dependency, specifically in point 5 of the section Declarations, which the complainant presented, expressly consented to the referral of their data to the Dependency Assessment Service (and therefore the treatment would also be protected by the legal basis provided for in article 6.1.a) of the RGPD , in relation - with regard to special categories of data - with article 9.2.a of the RGPD).

With regard to the entities that processed the dependency request that the complainant submitted on paper on 01/20/2020, the Department of Social Rights has indicated by letter dated 07/15/2022, that first the request was forwarded to the company INDRA BPO SERVICIOS SLU (hereafter INDRA), which acted as the person in charge of the treatment, in order for this entity to carry out the tasks entrusted by the Department of Social Rights, among those that included the digitization of the documentation and its review.

The Department of Social Rights has provided a copy of the contract signed with INDRA on 05/04/2018 and extended on 12/23/2020 (effective from 01/01/2021 to 08/27/2021), whose purpose is " *the provision of digitization, recording, administrative support and data processing services in the management of certain files of natural persons* ". The set of technical specifications corresponding to the awarded contract contains, with regard to the issues mentioned by the complainant, a clause 6 on " *security and data protection* ", which specifies the obligation that the contracting company (INDRA) complies, among others, with the data protection regulations, and with the security policy of the Generalitat de Catalunya, the guides and rules published by the CTTI; it is also specified (6.1) the obligation to train its staff in the obligations derived from these; it also establishes (6.2) the duty of confidentiality and the obligation for all its staff to sign a " *letter of acceptance of security obligations at the time of incorporation of the person in the execution of the service* "; also contains the order regulation (6.7); and sections 6.10 and 6.11 contain the obligations of the contracting company relating to the custody of paper files, and document management measures, respectively. Annex I of the set of technical specifications, entitled " *Archival criteria and document management. Digitization process of the documentation (scanning)* ", establishes, for what is now of interest, that (p. 24): " *once the contract is finished, the awarded company will carry out a single transfer in order to return the documentation that it holds in the its*

facilities at the Department of Work, Social Affairs and Families". Finally, the set of technical specifications contains an Annex III, which corresponds to the "document of acceptance of obligations relating to information security and protection of personal data", among which are included as obligations no. 1 and 2: "maintain the duty of secrecy towards the information to which they have access over time, even after the end of the collaboration", and "protect the information to which they have access for any reason during the provision of the service (...)"

On the other hand, the Department has pointed out that, once the dependency request submitted by the complainant was accepted for processing, on (...)/(...)/2021 it was assessed by Dependency Assessment Service (SEVAD) of the Vic Hospital Consortium.

The Department has provided a copy of the collaboration agreement signed with the Hospital Consortium of Vic on 21/03/2019 for the purpose of this entity carrying out the disability assessment service and assessment of the degree of dependency. He has also provided a copy of the Addendum and extension of this agreement. Clause 11a of this agreement regulates the protection of data, and among other issues foresees the obligation of the Consortium to *"keep professional secrecy with respect to the data received, and to guarantee its security through the necessary technical and organizational measures to in order to avoid its alteration, loss, treatment or unauthorized access"*, and also provides that *"at the end of the execution of the actions agreed between the parties, the supports received will be immediately returned to the Department, and will destroy any copy or document containing any personal data subject to processing (...)"*. Annex 2 of this agreement contains additional clause 2a, relating to "security and data protection", in point 8 of which it is pointed out that the Consorci Hospitalari de Vic acts as the entity in charge of the treatment, and enables this entity to process *"on behalf of the Department, the personal data necessary for the assessment of the degree of disability and the assessment of the degree of dependency"*, in addition to containing the regulation of the assignment.

From the regulation contained in the aforementioned contract and agreement, it follows that both INDRA and the Hospital Consortium of Vic had to access the diagnosis of the affected person - here the complainant - and other personal data recorded in their request for dependency and in the attached health report, in order to fulfill the public functions entrusted and subject to the obligations of confidentiality and security of the data provided for in the respective regulation of the order.

For his part, in the letter of complaint the person making the complaint referred to a possible violation of the duty of confidentiality, but did not provide any specific information about the alleged violation committed, so that, except for what is indicated in the following heading, their statements are considered mere suspicions without foundation, which do not allow to infer that INDRA or the Consorci Hospitalari de Vic violated the duty of confidentiality or some security measure with respect to their personal data recorded in the sole application and the attached health report. Consequently, it is considered that the data processing carried out by these two entities was protected by the legal basis in article 6.1.e) of the RGPD, in relation to article 9.2.h of the RGPD), and, with regard to the treatments derived from the participation of the Consorci Sanitari de Vic in the Dependency Assessment Service, also for the legal basis provided for in article 6.1.a) of the RGPD, in relation - with regard to the special categories of data - with article 9.2.a of the RGPD).

2.3. About the assessment staff that went to the home of the person making the complaint.

In the third and last place, the complainant complains about the assessor who went to his home in order to gather information to carry out the corresponding assessment on his dependency situation. Specifically, he states that the person who came to his home was not qualified in Medicine but in Physiotherapy, that he was not accredited (he would only have been identified with his ID), and that he asked questions *"that were not of the their competence"*.

In this regard, it should be noted that these reasons for complaint are not, or not directly, issues that may constitute a violation of data protection regulations. However, it is considered appropriate to briefly make several considerations.

On the one hand, with regard to the qualification of the assessment staff, the Department has stated, at the outset, that the visits made by this staff to the homes of people who request the recognition of dependency and the right to benefits, are not medical visits, but visits to assess the dependency situation, and that said assessment must be carried out in accordance with the provisions of the aforementioned Royal Decree 174/2011, which in its Annex 1 establishes the following:

"1. The application of the BVD must be based on the corresponding reports on the person's health or on their usual environment, as well as on the information obtained through observation, direct verification and the personal evaluation interview carried out carried out by a professional qualified and trained specifically for this."

Next, the Department has referred to the *Resolution of February 4, 2010, of the General Secretariat of Social Policy and Consumption, by which the Agreement of the Territorial Council of the System for Autonomy and Attention to Dependency is published, in matters of bodies and procedures for assessing the dependency situation*. This Agreement requires a degree to be an evaluator, and contains a second section referring to the specific training that must be required of the evaluators who apply the scale, in which certain preferential qualifications are indicated for access to the specific course, including the physiotherapy qualification, as follows:

"Second. Knowledge to be required of the appraisers who apply the Scale.

6. Training for the qualification of assessor personnel through specialized training courses that develop the above contents, will have as a preferential access requirement that people have degrees in medicine, psychology, occupational therapy, nursing, physiotherapy and social work. (Annex I)"

Inasmuch as Physiotherapy is one of the preferred qualifications to access the training course for the qualification as assessment staff, there is no doubt that it is one of the qualifications that the assessment staff who carry out the home visits of people who request the recognition of dependency.

In view of the above, from the point of view of data protection regulations, the fact that the evaluator who went to the complainant's home was a physiotherapist, and therefore had one of the qualifications point out in the above-mentioned Agreement, leads to the conclusion that there is no element in the facts reported from which it can be inferred that an action by the Department constitutes an infringement of the data protection regulations.

On the other hand, with regard to the identification of the assessing person who would have gone to the complainant's home, section 3.3 of the agreement signed with the Hospital Consortium of Vic states that: "*the assessing professional s "will identify and present a credential, as an assessor of the dependency of the Generalitat de Catalunya"*". In the specific case, if, as the complainant points out, the assessor identified himself only with his ID, he would have breached this clause of the agreement. But this breach, if true, would not in itself constitute a breach of data protection regulations. This consideration is made taking into account that the complainant has not questioned that the person who went to his home, and who consequently collected his personal data, was not part of the assigned evaluation team, but has only questioned that was not properly accredited.

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, any fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is necessary to agree to its archive.

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 made clear in the instruction of the procedure: "*a) The non-existence of the facts that may constitute the infringement"*.

Therefore, I resolve:

- 1.** File the previous information actions number IP 45/2021, relating to the General Directorate of Personal Autonomy and Disability of the Department of Social Rights .
- 2.** Notify this resolution to the General Directorate of Personal Autonomy and Disability of the Department of Social Rights and to 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,