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File identification

Archive resolution of the previous information no. IP 47/2021, referring to the Catalan Health Institute (CAP (...)).

Background

1. On 06/02/2021, the Catalan Data Protection Authority received a letter from Mr. (...) by which he filed a complaint against the CAP (...) of the Catalan Institute of Health (hereinafter, the ICS), on the grounds of an alleged breach of the regulations on the protection of personal data .

In particular, the complainant explained that he is an employee of the CAP of (...) (hereafter, the CAP). That on 19/09/2020 he sent an email from his corporate email account to the management of the center in which he complained about the lack of security measures in relation to Covid-19 and the non-existence of a protocol for treating patients who came to visit the CAP.

As he stated, on an unspecified date, but in any case after the email was sent: *"The management in a work meeting of all CAP employees. I'm on vacation. He read my e-mail, literally. And he asked in public who agreed with my writing"*

The complainant provided the email sent to the CAP management, the subject of which was the following: *"Lack of control on the part of the management"*, and its content:

"On 8/19/2020, I drew blood from a patient who a few minutes later had a PCR done, in isolation due to having contact with her granddaughter positive for coronavirus. No one warned me that this patient should be isolated during the extraction.

That lack of coordination, the lack of follow-up and disorganization makes professionals like me, with risk factors, call into question the organization and control on the part of this management. They cannot put their workers at risk due to lack of means of control. It has happened to me several times.

The lack of control and the measures of this direction, which fails to control the actions that should be more than protocolized, put the workers in danger.

I know that these are unpredictable times, but our health and that of our family must be a priority. Make an act of contrition, if you are not able to manage the current moment, resign."

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2. The Authority opened a preliminary information phase (no. IP 47/2021), 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 04/30/2021 the reported entity was required to report on the circumstances and the reasons why it would have communicated the content of the complainant's message to the workers of the center and if it had made public the identity of the reporting person. It was also required to explain the purpose of data processing consisting of dissemination among the rest of the workers of the content of the said message.

4. On 05/03/2021, the reported entity submitted a letter in which it requested an extension of the 10-day period granted in order to provide the required information, as well as requesting a copy of the email provided by the reporting person. On 06/05/2021, the accused entity was granted an extension of the 10-day deadline to send the information for another 5 days.

5. On 05/13/2021, the reported entity responded to the aforementioned request through a letter in which it stated the following:

- That, indeed, he received the said mail to the corporate mail addresses of the EAP Directorate and the Management Technique. That, the e-mail address of the reporting person is corporate and the e-mail was directed to the generic addresses of the team management and not to any specific person.
- That the reporting person spoke by phone with the deputy of the Primary Care Service of Vallès Oriental, and despised her work as a management team and asked for the dismissal of the positions collectively.
- That upon receiving the mail, the management met urgently with the management team and they decided hold an urgent team meeting.
- That in the aforementioned meeting the current protocols were presented and they left an open turn for the professionals to give their opinion on whether they considered them correct or if they wanted to comment on any aspect. They also asked if they considered the work of the management team appropriate or if they thought they should submit their resignation.
- That, at no time was it mentioned to the professional, only the facts that the professional claimed regarding the protocols were shared. And he considers that as a managerial figure, when a professional highlights a poor organization of his work, it is his fault obligation to share it and find a solution.
- After a few days of the meeting, management responded to the complainant's email explaining to him that we had shared the protocols and that they had modified them by introducing some amendments.

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6. On 09/07/2021, the Authority deemed it necessary to obtain more information and the reported entity was required to indicate the number of professionals who, around 02/06/2020, performed blood extractions at the CAP of (...).

7. On 16/09/2021, the reported entity responded to the aforementioned request through a letter in which it stated that there were a total of four professionals performing extractions: three professionals performed extractions at the center and another person did home withdrawals.

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.

In the present actions, it has been proven that, on an undetermined date, but in any case after receiving a complaint email from the complainant (19/09/2020), the management of the CAP called the workers to a work meeting to deal with the complaint that the reporting person had made in relation to the safety protocols of workers in the face of Covid-19. The complainant did not attend this meeting because he was on vacation.

According to the complainant, in the meeting *"The management (...) read my e-mail, literally. And he asked in public who agreed with my writing"*. For its part, the management of the CAP admitted that in said meeting the facts that the complainant claimed in his email were discussed. However, he denied revealing the identity of the person who sent the mail. In your response to the request for information

of the Authority, the management of the CAP reported that: *"at no time was the professional mentioned, only the facts that the complainant claimed regarding the protocols were shared"*.

In this case, it is necessary to take into account the context in which the content of the said e-mail is presented. Specifically, it was a meeting called by the CAP management with the workers to deal with complaints relating to the Covid-19 safety protocol established in the CAP. As we have said previously, it is not a controversial fact that the management of the center presented the complaints made by the complainant to the rest of the workers. Therefore, the question lies in determining whether the management of the center identified the person making the complaint and, in the case of not having done so, whether the content of the mail could be used to identify the person making the complaint.

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Regarding whether the management directly identified the author of the mail when reading his mail, the complainant does not expressly say so, in fact what he is reporting is that his mail was read. For its part, the management denies that it identified the complainant as the author of the complaint.

Regarding the content of the mail, it is appropriate to analyze whether the content of the message could infer the identity of the person authoring the mail. At this point it is necessary to take into account the concept of personal data collected in article 4.1 of the RGPD, personal data are: *"all information about an identified or identifiable natural person ("the interested party"); an identifiable physical person will be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, (...) or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person"*. In this case, the content of the message contains an element related to the profession of the reporting person, such as the following: *"realicé extracción de sangre"*. From these elements, the profession of the reporting person can be inferred and, depending on the number of people who make withdrawals at the center, it could be possible to identify the person who authored the email in question. It is for this reason that the Authority believed it necessary to require the CAP to specify how many people performed blood draws around 02/06/2020.

According to the answer given by the CAP, there were a total of four professionals performing blood extractions (three professionals performed extractions at the center and another performed the extractions at home).

In short, from the actions taken in this preliminary investigation phase, it has not been possible to prove that the management of the CAP disclosed the data of the person who submitted the complaint (the complainant). Nor can it be inferred that the person who was the author could be identified from the content of the email, given that at the time of the incident there were five professionals at the CAP who were carrying out blood extractions. This is why the right to the presumption of innocence prevails if it cannot be proven that the person making the complaint has been identified.

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.

Therefore, I resolve:

1. Archive the actions of prior information number IP 47/2021, 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.

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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,