

File identification

Archive resolution of the previous information no. IP 62/2021, referring to the Mutual Assistance Foundation of Terrassa, FPC (CAP Mútua Rubí).

Background

1. On 12/02/2021, the Catalan Data Protection Authority received, by referral from the Spanish Data Protection Agency, a letter in which a person made a complaint regarding the CAP Rubí Primary Care Center, of the Mutual Assistance Foundation of Terrassa, FPC (hereinafter, FAMT), due to an alleged breach of the regulations on personal data protection.

The complainant stated that there had been several improper accesses to his shared medical history in Catalonia (hereafter, HCCC), specifically, on July 22 and 30, 2020 from CAP Mútua Rubí, as it was inferred of the information published on the website *La Meva Salut*, of the Department of Health of the Generalitat. In order to prove the facts reported, he provided a copy of the access log published on this website, which contained, among other information, the following:

- Two accesses made from *Cap Rubí* on 07/22/2020 at 2:00 p.m. and on 07/30/2020 at 3:51 p.m., and with regard to the information consulted, on both dates it indicated "*Information Clinical History Summary*", and on 22/07/2020 it also indicated "*information clinical reports*".

The complainant justified his consideration of the improper nature of the accesses made from the CAP Mútua Rubí, pointing out that he was not a user of this CAP, and that the CAP assigned to him was the CAP Sant Llätzer, which belongs to the Consorci Sanitari de Terrassa.

2. The Authority opened a preliminary information phase (no. IP 62/2021), 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 10/06/2022 the FAMT was required to provide a copy of the log of accesses to the HCCC of the reporting person made on July 22 and 30, 2020, as well as because justify each of them.

4. On 06/27/2022, the FAMT responded to the aforementioned request through a letter in which it stated the following:

"The professional (name and surname) who accessed the shared medical history of Catalonia of the claimant on dates 22/07/20 and 30/07/20, is a doctor from the service of (...) of the Assistance Foundation de Mútua de Terrassa, FPC, which provides its services mainly at CAP Rubí, and occasionally also at the facilities of the Mútua Terrassa University Hospital, and for this reason in its user profile of the database of electronic clinical histories of the companies and entities in the care sector of Mútua Terrassa state that their Center of work is CAP Rubí.

On 07/22/20 a test of (...) was carried out on Ms. (...) at the Mútua Terrassa University Hospital, and the medical professional who had to prepare the corresponding report needed the patient's clinical information to interpret the findings of the test carried out. This is the reason for the access to his clinical history that has been the subject of a complaint."

The FAMT provided a letter signed on 06/22/2022 by the aforementioned doctor, in which she stated the following:

"In reference to my access to the Shared Clinical History of the patient with NHC (...) on the dates of 07/22/20 and 07/30/20 indicate that the reason for said access it is related to an examination (...) that was performed on this patient (...) / (...) / 20 at the Hospital of the Fundació Asistencial Mutua de Terrassa (FAMT) and that required that I access the clinical data of their history that they might have relation to said test.

My job is as a medical specialist in (...) of the FAMT and I practice both in the Hospital itself and in the CAP Mutua de Rubí. Any access that I have been able to make to his medical history has been unique and exclusively to obtain the information necessary for the exploration (...) of the day (...) / (...) / 20 and always for the benefit of the patient.

This patient had a finding in the CT scan on (...) / (...) / 20 that worried me. Days later, I accessed his HC again to look for previous studies, to look for some note or comment that would confirm to me that this finding was already known beforehand and, if not, that it was not left without the control of the relevant practitioner."

5. On 07/13/2022, the Authority requested the complainant to state within 10 working days whether the medical test (the examination (...)) had been carried out within the framework of the 'public healthcare (that is, that provided by CAP Mútua Rubí or the Mútua University Hospital of Terrassa within the public healthcare system), or within the framework of the provision of private healthcare.

6. Given that the deadline granted to the person making the complaint passed without receiving a response to the request for information, on 09/08/2022 the Authority requested identical information from the FAMT.

7. On 22/09/2022 the Authority received the letter of 21/09/2022 in response from the FAMT, accompanied by various documentation. In the written response he stated, among others, the following:

"(...) The CT test, carried out in the service of (...) of the University Hospital of the Fundació Asistencial de Mútua de Terrassa, FPC by the professional of this entity indicated in the voucher provided, was financed by Àptima Center Clínic, SL, as we attest through Document nº 1."

8. On 09/28/2022, the Authority requested the complainant to state within five working days whether he had explicitly consented to the aforementioned doctor (...) being able to access his HCCC in order to attend to her and for the purpose of performing the test (...) at the Terrassa Mutual University Hospital on 07/22/2020, as well as if, in the corresponding

medical process, she had received public assistance. This request for information was preceded by a telephone conversation held on the same date between the complainant and the instructor of this previous information, in which the complainant, after learning the reason for the access to his HCCC and the reason why "CAP Rubí" was indicated in the access register, he had stated that he had given his consent to the doctor (...) so that he could access his HCCC, and that the test in question he was part of a medical process in which he was receiving public health care. As a result of this conversation, the corresponding due diligence was carried out.

9. Given the lack of a written response from the person making the complaint, by letter dated 11/10/2022 - notified on 17/10/2022 - the Authority reiterated that it should respond in writing to the information requested, expressly warning her that, once the granted deadline had passed without having received her answer, the Authority would consider -as the complainant had verbally stated to the instructor- that the answer to both questions was affirmative, and consequently the present actions would be archived.

10. The deadline granted has passed without the complainant having responded to the latest letter from the Authority dated 11/10/2022.

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.

In this regard, it should be noted that the Mútua Terrassa University Hospital and the Mútua Rubí CAP are part of the integral health system for public use in Catalonia (SISCAT), by virtue of the formalization of assistance activity agreements with the Catalan Service of Health (CatSalut) of the Generalitat.

2. Based on the background story, it is necessary to analyze the reported events that are the subject of this archive resolution.

As explained in the background section, the complainant filed a complaint to consider that on 07/22/2020 and 07/30/2020 improper access had been made to his HCCC from the CAP Mutual Ruby

In this regard, the FAMT has come to point out that the information published in the HCCC access register certainly corresponds to accesses made to the HCCC by the person reporting on the days indicated, but that such accesses would not comply with the provision of healthcare from the CAP Mútua Rubí, but from the Mútua Terrassa University Hospital.

Specifically, he has stated that on 07/22/2020 the person making the complaint underwent a test (...) in the aforementioned hospital, and that the assigned doctor was the one who accessed the person's HCCC reporting This doctor, who is a doctor specializing in (...) at the FAMT, has stated in writing dated 06/22/2022 that, in order to carry out said test, prior access to the person's clinical data was necessary complainant that they could be related to said test, and that this was the only reason that justified their access to the HCCC of the

person making the complaint, adding that the access carried out on a date subsequent to the completion of the test, that is to say, the one carried out on 07/30/2020, obeyed the very result of the test carried out ("*... I had a finding in the TC of 07/22/20 that worried me. Days later, I accessed again in su HC to look for previous studies, look for some note or comment that would confirm to me that this finding was already known beforehand and, if not, that it was not left without the control of the relevant doctor*").

On the other hand, regarding the reason why in the information table of the accesses to the HCCC of the person making the complaint, and specifically in the field "*health center/authorized persons*", the *CAP Rubí* is indicated in the accesses recorded on July 22 and 30, 2020, the FAMT has indicated that the doctor (...) mentioned provides her healthcare services mainly at CAP Mútua Rubí, and this is the reason why this CAP is included in her profile user of the database of electronic clinical histories of the companies and entities in the care sector of Mútua Terrassa. This would explain that when this doctor accesses a patient's HCCC, the access is recorded with this information ("CAP Rubí"), regardless of whether it was accessed as part of the healthcare provided in the CAP Rubí or at the Mútua Terrassa University Hospital, where it also provides health services.

The statements made by the FAMT, as well as those made by the doctor (...), are credible, in the sense that they show that the accesses were carried out by a doctor for the provision of health care to the complainant, coinciding one of the accesses with the date on which a medical test was carried out, and the second access, a few days later, following the result obtained in this medical test.

Apart from these considerations about the healthcare reasons for the accesses, the FAMT has stated that the (...) (reference to the doctor) mentioned accessed the HCCC of the person making the complaint in order for him to have a test (...) financed by Àptima Center Clínic, SL.

In this regard, the Authority has made two requests for information to the complainant in order to clarify the circumstances in which this test would have been carried out. Although the complainant has not responded in writing to any of these requests for information, he did so verbally in a telephone conversation with the instructor of this previous information, in which he stated that said medical test it was carried out in the framework of a care process that had started and was being followed through the public health system provided by the FAMT, and that the (...) (reference to the doctor) had her consent to access your HCCC in relation to this test. In any case, in the office dated 11/10/2022 by which the second request for information was made, he was expressly warned that, in the event that he did not respond in writing within the period granted -as has been the case - his silence would be interpreted in the sense indicated in the context of the test and the explicit consent given.

In the present case, the provision of the explicit consent of the reporting person becomes completely relevant, since in order to carry out a treatment of data of special categories - such as health data -, the RGPD requires, of on the one hand, the concurrence of one of the legal bases provided for in article 6.1 of the RGPD, among which is the consent of the interested person (art. 6.1.a RGPD: "*the interested party gives his consent to the treatment of your personal data for one or several specific purposes*").

On the other hand, in order to carry out a processing of data of special categories, the RGPD also requires, and therefore cumulatively, that one of the exceptions provided for in article 9.2 of the RGPD that raises the general prohibition of processing data of this nature, which

includes the *explicit consent* of the interested person (art. 9.2.a RGPD: “ *the interested party gives his explicit consent to the treatment of personal data with one or more the specified purposes, except when the Law of the Union or of the Member States establishes that the prohibition mentioned in section 1 cannot be lifted by the interested party* .

That's the way things are, from the results of the research actions carried out it can be inferred that, on July 22 and 30, 2020, a (...) (referral to the doctor) of the FAMT accessed the HCCC of the reporting person, with the prior and explicit consent of this person, to the effect that this person will undergo a test (...) in a private entity, in the context of a care process that was followed in a center of health of the FMAT, by virtue of the provision of public assistance.

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 articles 6.1.a) and 9.2.a) of the RGPD.

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 62/2021, relating to the Terrestrial Mutual Assistance Foundation , FPC
2. Notify this resolution to the Fundació Asistencial de Mútua de Terrassa, FPC 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,

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