

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

File identification

Archive resolution of the previous information no. IP 89/2021, referring to Tortosa Salut, SLU (Terres de l'Ebre Clinic).

Background

1. On 01/03/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Tortosa Salut, SLU, on the grounds of an alleged breach of the regulations on personal data protection.

Firstly, the complainant stated that on 22/11/2020 the husband of a nurse at the Terres de l'Ebre de Tortosa Clinic insulted her, saying: *"don't be ashamed that you have to take care of your whole family when your mother is there to be taken care of?"*

The reporting person suspects that a nurse from the Terres de l'Ebre Clinic would have accessed his medical history. According to her, she bases her suspicion on the fact that she has never had any dealings with the nurse or her husband. However, he also claims to have denounced the husband of the said nurse on several occasions.

He considers it likely that access to his medical history took place prior to the date of the events, on an undetermined date but, in any case, from the month of February 2020, when the reporting person and his family went to live in the house next to the nurse's. Therefore, he believes that access to his medical history would have occurred from that date. According to him, the reason why the husband of the nurse has now used the information would be motivated by a penalty that would have been imposed on him and that *"he would have had to pay because of me."*

2. On 03/23/2021, the complainant was required to provide information on the name and surname of the nurse who, according to her, would have accessed her medical history.

3. On 03/24/2021 a letter was received from the complainant identifying the nurse as Mrs. (...).

4. The Authority opened a preliminary information phase (no. IP 89/2021), 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.

5. In this information phase, on 17/05/2021 the reported entity was required to report on whether between the period between 1/02/2020 to 22/11/2020 (both

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included) there was any access to the access register of the reporting person's medical history and, in case there were accesses:

- Provide a copy indicating the date and time of access.
- Identify the people who accessed it, and indicate the professional category they hold within the organization, as well as specify the reasons that would justify each and every one of the accesses made.

6. On 05/27/2021, Tortosa Salut, SLU responded to the aforementioned request through a letter in which it stated that they had audited all the accesses made to the medical history of the complainant and attached the list obtained .

However, the reported entity did not attach the aforementioned list of accesses to its written response.

7. On 09/09/2021, the reported entity was required to provide the list of accesses required on 05/17/2021.

8. On 09/09/2021, Tortosa Salut, SL complied with this requirement by providing the required access list.

According to the document provided:

- There is a total of 5 accesses between the dates 06/04/2020 and 10/08/2020.
- It also includes: the name and NIF of the user who accessed the medical history, the professional category (in all cases the category "Doctor" appears). And the reason for access: first visit, follow-up consultation, telephone consultation, first visit and subsequent visit.

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.

In accordance with article 3.1, the scope of action of the Catalan Data Protection Authority includes the files and the treatments they carry out: *"e) Entities under private law that meet, at least, a of the following three requirements in relation to the Generalitat, the local bodies or the bodies that depend on them: first. That their capital belongs mostly to the said public bodies"*.

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Tortosa Salut SLU, is a trading company with wholly municipal capital dedicated to the provision and management of all types of health and social assistance services.

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

The complainant had been visited several times at the Terres de l'Ebre de Tortosa Clinic, both for public and private health, and complained that a nurse working at the aforementioned Clinic had improperly accessed his medical history and subsequently disclosed her health information to her husband. He based his complaint on the sentence that this nurse's husband said to the person making the complaint: *"Aren't you ashamed that you have to take care of your whole family and are of?"*

According to the list of accesses provided by the reported entity, between the dates 1/02/2020 and 22/11/2020 there is no record of access made by the nurse, Ms. (...). In fact, all accesses have been made by doctors (their first and last names and NIF number are recorded) and in all cases the justification is recorded: first visit, follow-up consultation, telephone consultation, first visit and subsequent visit.

In addition, it should be borne in mind that from the sentence: *"don't you feel ashamed that you have to take care of your whole family when your mother is there to be taken care of?"*, no data is reflected specific health. On the other hand, due to the content of the expression *"don't be ashamed that they have to protect you"* it does not seem to refer to the legal institution of guardianship, but to a personal appreciation in relation to the person making the complaint. In addition, the institute of guardianship is not a health data but affects the ability to work of natural persons. Consequently, it does not seem likely that this expression was made in a literal sense. Moreover, taking into account that it says *"you are not ashamed"*, everything suggests that it does not refer to a person who is really protected, otherwise it is not likely that this expression would be used. In addition, the complainant has never referred to guardianship in the sense of having been incapacitated. Nor can it be ignored that the people involved in the facts that are the subject of this complaint are neighbors, and they could know, through neighbors' comments or through other means, that the mother of the person making the complaint was in delicate health. In any case, the list of accesses provided by the reported entity does not show any improper access to the medical data of the reporting person. All access is justified.

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

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Therefore, I resolve:

1. File the previous information actions number IP 89/2021, relating to Tortosa Salut, SLU.
2. Notify this resolution to Tortosa Salut, SLU 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,