

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

File identification

Archive resolution of the previous information no. IP 91/2021, referring to Tortosa Salut, SL (Terres de l'Ebre Clinic)

Background

1. On 02/03/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Tortosa Salut, SL on the grounds of an alleged breach of the regulations on protection of personal data.

First, the complainant stated that he was filing a complaint in relation to his health data in the same terms as the complaint filed by his daughter and which gave rise to IP 89-2021.

In accordance with this, reference must be made here to the content of the complaint of the daughter of the complainant, which is as follows:

"On 22/11/2020 the husband of a nurse from the Terres de l'Ebre Clinic in Tortosa, while you are not were walking down the street, he insulted my father and me. Among others he said to me: shame that you have to take care of your whole family when your mother is there to be taken care of?" (the reference to "your mother" was made in relation to the person reporting in this IP (IP 91-2021).

According to the daughter of the complainant, her mother was hospitalized at the time of the incident. And although it does not specify the hospital, everything points to the fact that it would not be the Clínica Terres de l'Ebre de Tortosa, as will be said later.

In the daughter's complaint, she claims that she suspects that the nurse at the Terres de l'Ebre Clinic would have accessed the medical records of her mother and hers. He bases his suspicion, he says, on the fact that they have never had any dealings with the nurse, nor with her husband. Although, she also claims to have reported the nurse's husband on several occasions. And he considers it likely that access to the aforementioned medical histories could have occurred prior to the date of the events, from February 2020, and that the reason why the nurse's husband decided to use the information after the date of access is believed to be motivated by the fact that on the day of the incident he received a penalty that he says *"he should have had to pay for his own reasons."*

Focusing now on what the complainant expresses in his complaint, he states that he has never visited the Terres de l'Ebre Clinic. And he also states that in February 2020, he and his family went to live in the house next to the nurse's. That is why he believes that access to his medical history would have occurred from that date.

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2. The Authority opened a preliminary information phase (no. IP 91/2021), 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 05/17/2021 the reported entity was required to report on whether between the period between 02/01/2020 and 11/22/2020 (both included) there is any access to the access register of the reporting person's medical history and, if there are accesses:

- Bring a copy that shows, apart from the date and time of access, the screens or resources accessed.
- 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 to the medical history referred to during the specified period.

4. On 05/21/2021, Tortosa Salut, SL responded to the aforementioned request through a letter in which it stated the following:

- We are not aware of any record of assistance provided to the complainant.
- The audit of accesses by patient search has been negative, that is to say, none is returned log of access to this reporting person.
- The reporting person does not exist in the center's HIS.

The reported entity provides the audit procedure that the center has implemented to control access to patients' clinical records.

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.

The complainant complained that a nurse working at the Terres de l'Ebre Clinic in Tortosa had improperly accessed his medical history and disclosed his health data to her husband. He based his complaint on the sentence that the husband of this nurse

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he said to his daughter, specifically: "*don't be ashamed that your whole family has to protect you when is your mother to be looked after?*"

According to the information provided by the reported entity, the patient search access audit has not provided any records of access to the reporting person, nor is there any assistance activity carried out for the reporting person in its records. This last statement is supported by the statements of the complainant himself when he states that he has never visited the Terres de l'Ebre Clinic.

In addition, it must be borne in mind that from the sentence: *are you not ashamed that your whole family has to look after you when your mother is there to be looked after?*", it does not follow that access to any specific health data. Nor can it be ignored that the people involved in the facts that are the subject of this complaint are neighbors (according to the person making the complaint, they went to live in the house next to the nurse in February 2020), which suggests that the husband The nurse could be aware of the reporting person's health condition due to the fact that they are neighbors or through various sources, such as comments from other neighbors. In any case, and for what is of interest here, the facts reported and investigated do not result in any improper access to the medical data of the person reported.

Therefore, the right to the presumption of innocence enshrined in article 24.2 of the Spanish Constitution and specified in article 53.2.b) of the LPAC applies here, which provides *that "(...) in the case of administrative procedures of a punitive nature, the presumed responsible will have the following rights: b) The presumption of non-existence of administrative responsibility until the contrary is proven."*

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. File the previous information actions number IP 91/2021, relating to Tortosa Salut, SL
2. Notify this resolution to Tortosa Salut, SL and the person making the complaint.
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, on an optional basis, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within a period of one month from

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count from the day after its notification, in accordance with the provisions of 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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