

## File identification

Archive resolution of the previous information no. IP 97/2021, referring to the Department of Social Rights and the Barcelona Social Services Consortium.

## Background

1. 07/03/2021 , the Catalan Data Protection Authority received a letter from a person in which he filed a complaint against the Department of Social Rights (hereinafter, Department of DS) and the Consortium of Social Services of Barcelona (hereinafter, CSSB), due to an alleged breach of the regulations on personal data protection .

In particular, the person reporting presented his complaint about the participation of the person in charge of the legal affairs of the Pere Mitjans Foundation (hereinafter, the Foundation) in the meetings held on the dates (...)/2020 and (...)/2020, by the Complex Cases Commission - Commission participated by the DS Department and the Health Department (hereinafter, SLT Department) -, and in the meetings held on 09/28/2020 and 19/10/2020, by the CSSB with health professionals from the SLT Department.

In these meetings, held in the context of the health crisis situation caused by Covid-19, issues surrounding the feasibility of the return of the complainant's son to the home of the Foundation's Estació del Mar residence were discussed, as well as of the protocols to be implemented in the event that said return takes effect. In this regard, the complainant considers that the only purpose with which the Foundation participated was to obtain health data from his son in order to design a strategy to achieve " *suspend the care contracts* " of his son, and thus prevent that he could return to occupy a position at the Foundation. In this sense, he points out that the meeting on 06/19/2020 was attended by the doctor from the Vall d'Hebrón University Hospital (HUVH) - dependent on the Catalan Health Institute (ICS) - who has as to patient the child of the reporting person. He also complains about the Foundation's participation in the drafting of the minutes of the meeting of the Committee on Complex Cases of the day (...)/2020.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 97/2021), 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. On the dates 07/03/2021, 22/03/2021, 31/03/2021, 03/07/2021 and 11/10/2021, the person making the complaint presents additional writings and documents to his complaint dated 07/03 /2021, through which it proves the participation of the Foundation, in the referenced meetings of the Commission for Complex Cases to assess the viability and the health measures to be adopted for the eventual return of the child of the person reporting to the residence Estació of the Mar de la Fundació , and at the meetings of the CSSB with health professionals from the SLT Department to deal with the matter " *Specification of the protocols linked to the return to the Home Residence Estación de Mar 4 of Mr(...)* ."

He also maintains that the entity's participation in said meetings is for the sole purpose of obtaining personal data of his son in order to prevent his return to the Foundation's home place. In this regard, it provides, among other documents, the following:

- copy of the resolution of the previous Department of Work, Social Affairs and Families, now Department of Social Rights, dated 02/09/2021, establishing the re-entry of the complainant's child into the residential service Home Residence Sea Station.

- copy of the inspection report dated 02/17/2021, issued by the inspection services of the Department of Labour, Social Affairs and Families, which states that the Foundation has prevented the re-entry of the person's child reporting to the Estación de Mar residence home of the Foundation.

He also complains that the DS Department contradicts itself regarding the nature of the meeting on (...) /2020, since in the document " *Commission complex cases July 2020* ", issued by the Department on 30 /07/2020, includes said meeting within this group, and, in the response to a request for access to public information (procedure code (...), dated 03/31/2021 , he indicated in one of the answers, that said meeting " *was not a meeting of complex cases* ". In this regard, provide a copy of the two documents.

4. In this information phase, on 06/21/2022 the DS Department was required to report, among others, on the legal basis that would legitimize the Foundation's attendance at the meetings of the Commission of Cases Complexes held on the dates (...) /2020 and (...) /2020. It was also required to report whether the Foundation has the status of being in charge of the processing of personal data, at the expense of the DS Department. Finally, if the Department of DS also participated in the meetings with the CSSB on " *Specification of the protocols linked to the return to the Home Residence Station of Mar 4 of Mr(...)* ".

5. In this information phase, on 06/21/2022, the CSSB was also required to inform, among others, whether the Foundation has the status of being in charge of the processing of personal data, at the CSSB's expense. Likewise, he was also required to report on the legal basis that would legitimize the Foundation's attendance at the meetings that the CSSB held with representatives of the Department of SLT , on the dates 28/09/2020 and 19/10/ 2020, in which the matter to be dealt with was " *Specification of the protocols linked to the return to the Home Residence Estación de Mar 4 of Mr(...)* ".

6. On 07/07/2022, the CSSB requested an extension of the deadline to respond to the request for information made by this Authority, which was denied on the same date, since the request was made outside of the term established for that purpose.

7. On 12/07/2022, the CSSB responded to the aforementioned request through a letter in which it stated, among others, the following:

- *That "In the field of public administrations, the enabling legal basis provided for in letter e) of article 6.1 of the RGPD, relating to those cases in which the intended treatment is necessary for the fulfillment of a mission carried out in the interest of public or in the exercise of public powers conferred on the data controller. On the other hand, the processing of health data for the purposes of health and social assistance could be authorized by article 9.2.h) of the RGPD, on the*

*basis of the law of the Union or of the member states, as long as it is carried out by professionals subject to the obligation of professional secrecy (article 9.3 RGPD)."*

- That *"Both the current health regulations and the social services regulations allow in certain cases the exchange/access of certain personal information between these services when it is necessary for adequate attention to the people affected, as is the case that we deal with:  
Law 21/2000, of 29 December, on the rights of information concerning the patient's health and autonomy, and clinical documentation.  
Law 41/2002, of 14 November, basic regulation of patient autonomy and rights and obligations in the field of information and clinical documentation.  
Law 12/2007, of October 11, on social services."*
- That *"On the other hand, in relation to the legal basis that would legitimize the assistance of the Pere Mitjans Foundation, the existence of a public contract for the provision of services between the Consorci de Serveis Social de Barcelona and the Pere Mitjans Foundation would legitimize the assistance of the Pere Mitjans Foundation to the coordination meetings between these entities and the processing of data because it is necessary for the execution of a contract to which the interested party is a party (Article 6.1.b) RGPD). "*
- That *"Also, the private social service entities that provide the Public Care Social Services Network, among which is the Pere Mitjans Foundation, are authorized, and in fact are obliged, to attend the coordination meetings between the administrations involved and the entities providing the services in order to provide adequate services and in accordance with current regulations."*
- That *"the Pere Mitjans Foundation is in charge of the processing of personal data on behalf of the Consorci de Serveis Social de Barcelona.  
The Consorci de Serveis Social de Barcelona and the Pere Mitjans Foundation signed a public contract for the provision of services dated March 15, 2018, to which the conditions established in the set of administrative clauses and the set of technical clauses apply .  
Likewise, the contractual relationship between the Barcelona Social Services Consortium and the Pere Mitjans Foundation is also regulated by the Resolution dated September 8, 2021 of the Barcelona Social Services Consortium, calling for the provision of social services the Public Care Social Services Network in the field of childhood, adolescence, and young people in the social concert and delegated management regime, and for the adaptation to the legal regime of the social concert and delegated management in the areas of childhood and adolescence, young people and disabilities (DOGC no. 8497), Decree 69/2020, of 14 July on accreditation, social concert and delegated management in the Network of Social Services of Public Care, the 'Order TSF/218/2020, of December 16, for the provision of social services and Public Care, and Resolution DSO/2883/2021, of September 16, by which they are included in the Order TSF/218/2020, of December 16, for the provision of the services of the Social Services Network of "Public Attention, (...)"*

The reported entity attached various documentation to the letter, specifically:

- copy of the minutes of the meetings of the dates 28/09/2020 and 19/10/2020 .

- copy of the contract for the provision of services formalized between the CSSB and the Foundation, dated 03/15/2018, and of the set of administrative clauses and the set of technical clauses, in which the status of the Foundation as in charge of the treatment, and it is stipulated that it will treat, on behalf of the CSSB, the personal data necessary for the provision of the residence and day center service.

8. On 07/15/2022, the DS Department responded to the aforementioned request through a letter in which it stated, among others, the following:

- That " *The Pere Mitjans Foundation has a public contract for the provision of services with the Consorci de Serveis Social de Barcelona, therefore, the legal basis that legitimizes the attendance of the Pere Mitjans Foundation at the meetings would be article 6.1.b) of the RGPD, relating to those cases in which the treatment is necessary for the execution of a contract.* "
- That " *There is not actually a minute, but rather a document (we attach a document in pdf format : complex cases committee July 2020) summarizing the topics discussed in both meetings .* "
- That " *the Commission for Complex Cases was created in the field of collaborative work between the Department of Health and the Department of Labor, Social Affairs and Families, with the aim of finding the appropriate resource for those people who, given their complexity due to various casuistics - such as mental health reasons, social environment, etc. - present difficulties in accessing the ordinary services of the Catalan social services system .* "
- That " *Taking into account the above, the case (...), was treated as a complex case during the crisis caused by the Covid-19, given his pathologies and in the face of his family's insistence that he needed to ensure risk zero in the return of his son to the Pere Mitjans Foundation.* "
- That " *The Pere Mitjans Foundation is in charge of the processing of personal data on behalf of the Barcelona Social Services Consortium, in accordance with article 28 of the RGPD.* "
- That in relation to the meetings on " *Specification of the protocols linked to the return to the Home Residence Estación de Mar 4 of Mr(...)* " , they state that " *the Department of Social Rights participated in the meeting.* "
- That " *In the field of public administrations, the enabling legal basis provided for in letter e) of article 6.1 of the RGPD, relating to those cases in which the intended treatment is necessary for the fulfillment of a mission carried out in the interest of public or in the exercise of public powers conferred on the data controller. On the other hand, the processing of health data for the purposes of health and social assistance could be authorized by article 9.2.h) of the RGPD, on the basis of the law of the Union or of the member states, as long as it leads to term for professionals subject to the obligation of professional secrecy (article 9.3 RGPD).* "
- That " *With regard to the FPM, as we indicated above, it acts as the data controller (Article 28 RGPD).* "

The reported entity attached various documentation to the letter, specifically, a copy of the document entitled " *Commission complex cases July 2020* ", in which it is reported that two meetings have been held, on the dates ( . ..)/2020 and (...)/2020, and details its content:

**"Subjects discussed at the meeting of (...):**

- *Current situation of the case: health problems and type of disability you suffer from*
- *Type of resource to which it is entered*
- *Physical and organizational considerations of the residential home*
- *Assessments regarding what might be the best solutions to respond to the needs of (...) and support his family.*

**Topics discussed at the (...) meeting :**

- *Review of the case and presentation of the current situation*
- *Agreements: two options will be proposed to the family, return to the residence with all the relevant security measures or stay at the family home."*

## **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 facts that are the subject of this archive resolution, specifically, the participation of the Foundation in the meetings of the Committee on Complex Cases - Committee participated by the DS Department and the Department of SLT-, and in the meetings held by the CSSB and other entities, in which personal and health data of the child of the reporting person were discussed.

At the outset, and in order to place the issue subject to complaint, it must be indicated that said meetings were held in the context of the health crisis situation caused by Covid-19, and they debated issues surrounding the feasibility of the return of the reporting person's son to the Foundation's Estació del Mar residence, as well as the protocols to be implemented in the event that said return takes effect, taking into account the pathologies he had been diagnosed with, and " *in the face of his family's insistence that he needed to ensure zero risk in the return of his son to the Pere Mitjans Foundation.*"

This extreme is confirmed by the documentation provided as part of the previous information, and specifically, the document entitled " *Commission complex cases July 2020* ", in which it is reported that two meetings have been held, on the dates (...)/2020 and (...)/2020, and details the topics discussed (transcribed in the 8th law record), and also the minutes of the meetings held on 28/09 /2020 and 19/10/2020, where it is indicated that the topic to be discussed is " *Specification of the protocols linked to the return to the Home Residence Estación de Mar 4 of Mr(...)* ", and they are among the entities attending , representatives of the Foundation.

Having said that, it is foreseeable that among the information discussed during the meetings there would be personal and health data of the reporting person's son, and that, therefore, those attending the meetings would have access to said information.

Well, regarding this, it is necessary to indicate, first of all, that the legal relationship between the Foundation and the CSSB - Consortium which in turn is made up of the Department of DS and chaired by the councilor of said Department - fits into the model of the person in charge of the treatment regulated in article 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement of these (hereinafter, RGPD), and in article 33 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD). In the present case, the CSSB is responsible for the treatment, and therefore determines the purposes and means of the data treatment (art. 4.7 RGPD), and the Foundation is the entity that carries out the treatment on behalf of the person in charge (art. 4.8 GDPR).

That being the case, article 33.1 of the LOPDGDD is applicable, which, in relation to the communication of data between the person in charge of the treatment and the person in charge of the treatment, establishes the following: "*Access by a person in charge of processing personal data that is necessary for the provision of a service to the person in charge is not considered a communication of data as long as the provisions of Regulation (EU) 2016/679, this Organic Law and its rules are complied with of deployment.*" Therefore, the exchange of data about the child of the reporting person that could be done within the framework of the various meetings attended by the Foundation, in accordance with the provisions of article 33.1 of the LOPDGDD, is not it considers a communication of data for which it is not necessary to obtain the consent of the affected persons, nor does it require to be legitimized by any other legal basis than those provided for in article 6 of the RGPD.

Well, to the extent that the CSSB and the DS Department processed personal and health data of the reporting person's child within the framework of the various meetings, protected by the legal basis of article 6.1.e) of the RGPD and the circumstance contained in article 9.2.h) of the RGPD, it must be concluded that the Foundation was also legitimated for the processing of said personal data due to the social care home service it provided to the child of the reporting person, as responsible for the treatment on behalf of the CSSB. As things stand, the Foundation was able to participate in the referenced meetings because they dealt with issues within its competence, in that they had to do with the return of the complainant's son to the referenced home residence of the entity.

Likewise, it should be taken into account that the son of the complainant had been occupying a place in the Foundation's residential home until the service was suspended following the health pandemic, when it was decided to return him to the home family, for which reason, it is unquestionable that, before the holding of the said meetings, the Foundation already had first-hand personal and health information of the people using the service, and therefore of the child of the person making the complaint, already collected from the legal guardians of the users themselves, or information that the CSSB, as data controller, had communicated to the Foundation so that the entity could provide the social service in charge.

Finally, regarding the complainant's complaint about the preparation of a draft of the minutes of the meeting of the Commission for complex cases dated (...)/2020 by the Foundation, which it is not known that it was formalized as a final act, it should be indicated that, as it is

an internal aspect related to the functioning of the collegiate bodies, which is not relevant from the point of view of data protection regulations ..

**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.** Archive the actions of prior information number IP 97/2021, relating to the Department of Social Rights and the Consortium of Social Services of Barcelona.
- 2.** Notify this resolution to the Social Rights Department and the Social Services Consortium of Barcelona and to the complainant.
- 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,