

File identification

Archive resolution of the previous information no. IP 192/2021, referring to the Catalan Health Institute (Joan XXIII University Hospital of Tarragona).

Background

1. On 04/05/2021, the Catalan Data Protection Authority received a letter from a person for whom the Joan XXIII University Hospital of Tarragona was making a complaint (henceforth, HJ23) - dependent on the Catalan Institute of Health (henceforth, ICS) - due to an alleged breach of the regulations on personal data protection.

Specifically, the complainant - Mrs. (...) - complained of alleged improper access to his HJ23 medical history. In his writing, the complainant indicated that HJ23 had provided him with a record of access to his medical history, and that he had "suspicions" that they had improperly accessed because he did not "recognize" many of the accesses that appeared in this record.

2. The Authority opened a preliminary information phase (no. IP 192/2021), 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 07/05/2021, the reporting person was asked to provide the log of access provided by HJ23, and to specify as far as possible which were the accesses that considered unjustified.

4. On 05/17/2021, the complainant's response letter was received, in which he reiterated that he "knew that his medical history had been improperly accessed", but without specifying which of the accesses he considered unjustified.

Along with his letter, the person making the complaint provided the log of access provided by HJ23, referring to the period between 07/12/2018 and 06/30/2020, which contained the following fields in relation to each of the accesses: "date of access", "time of access", "professional category" and "module description/justification". Regarding this last field, some of the accesses contained the literal "ETC not justified".

5. In this information phase, in offices of 05/27/2021 and 07/20/2021, the reported entity was required to report on the reason that justified each of the accesses that appeared in the register that HJ23 himself had provided to the person here reporting, referring to

period between 12/07/2018 and 30/06/2020; and, especially, in relation to those accesses in which the literal "ETC not justified" was included.

6. The ICS responded to the requirements of this Authority by means of letters dated 19/07/2021 and 30/09/2021 in which it explained the reason for access to the medical history of the reporting person. In relation to the accesses that contained the literal "ETC not justified", he stated that *"in the hospital information system (SAP), the label ETC not justified is marked whenever the patient is not included in a work list. Therefore, these accesses have been made within the framework of the care process without having the patient planned in a work list"*. In short, the ICS reiterated to this Authority what it had already informed the complainant here in a letter dated 04/27/2021 (which copy it provided), in the sense that all access to his clinical history had been made for the purpose of care and that, therefore, they were justified.

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. As indicated in the antecedents, the complainant complained of alleged improper access to his medical history by HJ23, dependent on the ICS. Specifically, he stated that HJ23 had provided him with the log of access to his medical history from 07/12/2018 to 06/30/2020 and that he had "suspicions" that they had improperly accessed because he did not "recognize" many of the accesses that appeared in this record. It is worth saying that the Authority asked the complainant to specify, as far as possible, which of the numerous accesses contained in her medical history it would consider unjustified, which the complainant did not do.

The ICS, in response to this Authority's information requirements, justified the accesses made to the complainant's medical history, indicating that they were justified for healthcare reasons. In view of the information contained in the proceedings, this Authority does not have any element that would allow us to question the reasons put forward by HJ23 and that would justify access to the complainant's medical history.

That being the case, the right to the presumption of innocence enshrined in article 24.2 of the Spanish Constitution, and article 53.2.b) of the LPAC, which determines that *"The sanctioning procedures must respect 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.

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 highlighted in the instruction of the procedure "*b) When the facts are not proven*".

Therefore, I resolve:

1. Archive the previous information actions number IP 192/2021, 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.

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 its notification, in accordance with the which provides for 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, the interested parties can] file any other appeal they deem appropriate to defend their interests.