

## File identification

Archive resolution of the previous information no. IP 234/2021, referring to the Integral Health Consortium

## Background

1. On 06/03/2021, the Catalan Data Protection Authority received a letter from a person who was filing a complaint, on the grounds of an alleged breach of the regulations on personal data protection .

Specifically, the complainant stated that, on 31/05/2021, he received an SMS message on his mobile phone, through which he was informed of an access to his medical history, carried out from the " *Centre of Primary Care Sagrada Família* ". In this regard, the complainant pointed out that said message seemed to refer to an access made from the CAP Sagrada Família de Manresa, and that since she is a user of the Basic Health Area (ABS) of Solsonès, this access was not justified .

The reporting person provided a printout of the SMS message that, according to him, he would have received on 05/31/2021. In this impression is the following literal "CSI" - "*Dear, we inform you that the CIP data has been accessed: (...)from the center: CAP Sagrada Família*".

2. The Authority opened a preliminary information phase (no. IP 234/2021), 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 06/21/2022 the Integral Health Consortium (CSI) was requested to confirm whether, on 05/31/2021, there was access to the reporting person's medical history , from the CAP Sagrada Família de Manresa or from another CAP belonging to the CSI and so that, in the affirmative, he would report on the circumstances of the aforementioned access. In this regard, he was also required to state the reasons and the legal basis that would have protected the reported treatment.

4. On 06/29/2022, the CSI responded to the aforementioned information request through a letter in which it stated the following:

- That the CAP Sagrada Família de Manresa is not a center that belongs to the CSI and, therefore, the consortium is not the entity responsible for the treatment of the controversial data.

- That, it is not possible to check whether there was access to the medical history of the reporting person from any CAP attached to the CSI given that the computer system "informs us that access to *their data is restricted given that this person has exercised the right of opposition*".

5. Having noted that this Authority that the CAP Sagrada Família de Manresa depended on

the Catalan Health Institute (ICS), on 07/22/2022 an information request was addressed to this entity in order to confirm whether it was responsible for the treatment corresponding to the eventual access to the medical history of the person making the complaint carried out on 05/31/2021 and because, in the event of being -ho-, report on the circumstances of the access.

**6.** On 09/02/2022, the ICS responded to the request indicated in the previous antecedent, in the following terms: "*the ICS does not manage the CAP Sagrada Família de Barcelona, which is what the interested person is attached to in this procedure. The CAP Sagrada Família de Barcelona is managed by the Consorci Sanitari Integral, the entity responsible for the treatment of this access (...)*".

**7.** On 09/28/2022, the Authority sent a letter to the complainant requesting certain information, among other things, to confirm which CAP was the user on 05/31/2021, and about whether she would have been a user of the CAP Sagrada Família de Barcelona, at some point.

**8.** On 10/24/2022, the complainant responded to the office indicated in the 7th precedent, indicating that she was a user of CAP Solsonès.

**9.** On 26/10/2022 the Authority sent an information request to the Department of Health in order to provide a copy of the log of access to the shared medical history (HC3) of the reporting person, from period 01 /05/2021 to 30/06/2021. Likewise, the Department was also required to identify the CAP from where the eventual access on 05/31/2021 would have been made and the people who would have accessed the information; report on the entity responsible for sending notices of access to clinical history by means of SMS to the users, and on whether these notices are made in relation to access to the HC3 - database dependent on the Department of Health - and/or also in relation to access to clinical histories managed by primary care centers.

**10.** On 21/11/2022, the Department of Health responded to the request indicated in the previous antecedent, providing the record of accesses to the HC3 of the person making the complaint, in which there is no record of any access in date 05/31/2021. Regarding the management of SMS alerts to users, the Department argued the following:

*HC3, users are not notified of access to the clinical history either by SMS or by any other means. (...) Access control to HC3, as highlighted in the previous section, is carried out, among other measures, through the access register in order to comply with traceability as a security measure applied to help guarantee a correct treatment of personal data. Finally, it should be mentioned that the log of accesses includes those that have been carried out in the HC3 and not in other treatments such as the Ecap".*

**11.** On 29/12/2022 the Authority sent a new request for information to the CSI by which it was required to indicate whether the CAP Sagrada Família de Barcelona is managed by the consortium and, if so, to confirm whether there was access to the medical history of the reporting person on 31/05/2021, as reflected in the SMS that was sent to him (antecedent 1), and indicating the reasons for which the information was accessed reference.

**12.** On 13/01/2023, the CSI responded to the requirement indicated in the 11th precedent, reporting the following:

- That *"the request has been transferred to the Central Services department of eCAP , without having received a response at the time of transferring the response to the office through the Consorci Sanitari Integral. For this reason, it is not possible to provide answers to the questions with the detail that would be desirable" (...)*
- That it is not recorded that the complainant has been visited in the aforementioned CAP.
- That, *" despite the efforts made by the Consorci Sanitari Integral, including the consultation of the access register, the management through the eCAP software Op (version of the eCAP specific for, among others, the audit of accesses) and the consultation with the eCAP management services dependent on the Department of Health of the Generalitat de Catalunya, no access has been detected the patient's medical history or other data from the aforementioned CAP Sagrada Família de Barcelona center, either on the date of the message or at any other time"*
- That, *" despite having carried out the verification of access to the patient's personal information, no indication could be found that, from the CAP Sagrada Família de Barcelona, any access has occurred even on the date indicated by the complainant or in any other".*

**13.** On 19/01/2023, the CSI sent a new letter for the purposes of expanding the information indicated in the previous antecedent, highlighting, for what is of interest here, the following circumstances:

- That , *"In relation to the review of accesses to the claimant's personal data, the scope of the search has been extended not only to data of a clinical or healthcare nature, but a search has been made of the accesses to the modules of a purely administrative nature. This search did give a positive result, since an access is shown that matches the date of access and the time stated in the SMS message. This access to administrative data has been carried out within the framework of the Attention Information System Primary (SIAP) This initiative of the Ministry of Health is of a statistical nature and is included in the National Statistical Plan . This annual statistical study includes the collection of data on the population served by a given primary care health center, in order to be able to evaluate the availability of resources per inhabitant in each of these centers."*
- That , *" a screenshot of the review of the accesses made is provided. In this capture you can see how the accessed module is the USUFG001-USER SEARCH module. This module is purely administrative in nature. Likewise, the professional listed as responsible for access is the professional in charge of managing data collection within the framework of the aforementioned SIAP statistical program. The log of accesses does not include any other access to either the administrative module or the clinical or care module. For this reason, by restricting the search to clinical data, it was not recorded that any access to the claimant's data had taken place".*

**14 .** On 01/24/2023, a new request for information was addressed to the CSI to justify the reasons for which the administrative data of the person reporting was accessed, taking into account, on the one hand, that according to the same CSI, the person reporting here would never have visited the CAP Sagrada Família in Barcelona; and on the other hand, that in the reference statistical study information would be collected on the population treated at the primary care center in question. Likewise, the CSI was also required in order to indicate the period of affiliation of the reporting person to the referred center.

**15.** On 03/02/2023 the CSI submitted a letter to the Authority in which it reported the following:

- That, " *it has been possible to verify that the date of enrollment in the CAP Sagrada Família is March 31, 2020, this being the CAP of enrollment of the user from that date until today* " .
- That, " *the user has not been visited at CAP Sagrada Família* " .
- That, " *on the scope of the statistical study, the Primary Care Information System (SIAP) covers the entire population attached to a health center at state level, regardless of whether or not they actually receive services from the center to which it is attached. In this sense, the population of the statistical study is, according to the document of definitions of the study, "(...) the population assigned to the professionals of the Primary Care Teams. It is compiled at the level of health areas, by five-year age and sex groups* " .
- That, " *every person attached to a health center equipped with a Primary Care Team (EAP), regardless of whether or not they have received health services or been attended to by this EAP, must be taken into account this statistical study promoted by the Ministry of Health and integrated into the National Statistical Plan* " .
- That, " *even though the data is communicated in an aggregated manner" by five-year age and sex groups" , the collection of information in the centers is carried out by accessing the administrative data of each user by the staff who are expressly have assigned these functions* " .
- That, " *the reporting person was assigned to CAP Sagrada Família at the time of the events and was part of the population group included in the statistical study "PRIMARY CARE INFORMATION SYSTEM OF THE NATIONAL HEALTH SYSTEM SIAP-SNS"* " .

## **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 events that are the subject of this archive resolution.

The complainant explained that, on 31/05/2021, he received an SMS message on his mobile phone, through which he was informed that his medical history had been accessed from the "CAP Sagrada Família" . In this regard, she pointed out that she was a user of the ABS del Solsonès and that the mentioned SMS message would have alerted her of an access that she believed was made from a CAP of which she was not a user, specifically, from the CAP Sagrada Família of Manresa, reason why he considered this access unjustified.

Before analyzing the legality of the access, it must be clarified that after addressing several information requests to the CSI, the Department of Health and the ICS, it has been established that the reported access was taken to term from the CAP Sagrada Família de Barcelona - managed by the CSI - and not from the CAP Sagrada Família de Manresa (as the complainant had pointed out in his letter of complaint). And it should also be noted that, according to the Department of Health's databases, the person making the complaint is attached to the CAP Sagrada Família in Barcelona, a fact that is not an impediment for him to receive assistance at the ABS del Solsonès, as it seems it would be the case of the person reporting here.

Having established the above, it is necessary to analyze the circumstances in which the access carried out on 05/31/2021 from the CAP Sagrada Família in Barcelona to the history of the reporting person occurs. In this regard, the CSI has argued that the reference access was carried out by a person with an administrative profile, within the framework of the statistical initiative "Sistema de Información de Atención Primaria (SIAP)" of the Ministry of Health, collected in the National Statistical Plan. In this regard, he explained that the access made by said employee, in the exercise of their duties, was limited to a module of a purely administrative nature, and added that the person who accessed it, is precisely in charge of the management of the collection of data within the framework of the aforementioned statistical program. This is how things are, despite the fact that the person making the complaint had never been visited at the said CAP, he would have been included in the statistical study given that this included the entire population attached to the center, regardless of whether he had been visited or not.

Well, article 6 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 their personal data and the free movement of these (hereinafter, RGPD) provide the legal bases that legitimize the processing of personal data. In the case at hand, given that the controversial data processing is intended to carry out a statistical activity, related to the primary care system, it is appropriate to affect the legal basis provided for in section e) of article 6.1 RGPD, which provides for the legality of the treatment when it is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the person responsible for the treatment.

For what is of interest here, article 25.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), in relation to the processing of data in the field of the public statistical function, provides that the communication of data to the competent bodies in statistical matters is only understood to be protected by article 6.1 e) of the RGPD, when the statistical information is required by a law of the Union European or is included in the statistical programming instruments provided by law. And, in this respect, article 8 of Law 12/1989, of 9 May, on the Public Statistics Function, provides that the National Statistical Plan is the main organizing instrument for statistical activity. In accordance with this legal provision, article 2 of Royal Decree 1110/2020, of December 15, which approves the National Statistical Plan 2021-2024, develops the content of this Plan. The annexes to this rule include the strategic lines of the Plan, classified by sector or area, constant, among others, the "*Primary Care Information System of the National Health System*" of which they form part the structures and public services in the health service, both of the State and of the Autonomous Communities (art. 44 of the Law, of 25 April, General of Health).

In accordance with the above, and as it has been advanced, it must be concluded that the controversial access would find its qualification in the legal basis included in article 6.1.e) of the RGPD, insofar as 'would have been carried out by an authorized person, in the exercise of his functions, with the purpose of collecting information in the framework of the statistical study that is integrated into the National Statistical Plan, provided for by Law 12 /1989, of May 9, of the Public Statistics Function.

**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 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that "(... ) *no charges will be drawn up and dismissal will be ordered of the file and the file of the actions when the proceedings and the tests carried out, the non-existence of infringement or liability is proven. This resolution will be notified to the interested parties*". And article 20.1) of the same Decree determines that the dismissal proceeds: " a) *When the facts do not constitute an administrative infraction*".

Therefore, I resolve:

1. File the previous information actions number IP 234/2021, relating to the Integral Health Consortium.
2. Notify this resolution to the Consorci Sanitari Integral 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,