

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

File identification

Archive resolution of the previous information no. IP 270/2021, referring to the College of Doctors of Barcelona

Background

1. On 07/06/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the College of Doctors of Barcelona (hereafter CoMB), on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the complainant (Mr. (...)), complained that the CoMB would have disclosed data relating to his mental health - specifically, that he suffers from a paranoid personality disorder (PPD) - to the Center of Horta-Guinardó Mental Health (CSMHG) - managed by the Horta Guinardó Mental Health Association (ASMHG), whose center he had been a patient of until July 2018 and against which he had lodged a complaint with the same CoMB in August of 2018 for the medical care provided. This disclosure, according to the complainant, would have occurred between 01/31/2019 and 02/12/2019 given the following:

- In December 2018, the CSMHG delivered to the complainant a copy of his medical history in which, according to the complainant, there was no diagnosis of TPP.
- On 01/31/2019 the complainant here submitted to the CoMB, as part of the reserved information file initiated following his complaint against the CSMHG, a letter in which he informed this corporation that the CSM (...) (centre of which he was a patient at that time) had diagnosed him with TPP.
- On 12/02/2019 Dra. (...) of the CSMHG issued a report addressed to the Catalan Health Service in which it was mentioned that Mr. (...), among other disorders, suffered from TPP.

According to the complainant, the fact that the diagnosis of TPP was not recorded in the clinical history that the CSMHG had provided him in December 2018, would prove that some center or entity that had this information, specifically the CoMB, had provided the CSMHG after that date, and that is why Dra. (...) - optional for this center - had been able to include it in its report dated 02/12/2019.

The reporting person provided various documentation to substantiate the facts reported, among others:

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

- Report referred to here denounced, issued on 02/12/2019 by Dra. (...) of the CSMHG, addressed to the Catalan Health Service, which contains the following verbatim: *"clinical symptomatology objectified both by me and by the other professionals who have intervened in your case during these four and a half years, is compatible with a disorder (...) in addition to a paranoid personality disorder (301.0). This last diagnosis has been made clear during all this time, through his permanently distrustful, complaining and critical attitude towards any indicated therapeutic measure, always questioning any of the multiple (...)"*.

- *"Evaluative report of the medical assistance provided"* reported here by the CSMHG, issued on 07/16/2019 by the Institute of Medical Assessments (ICAM), as part of a procedure initiated following the claim for patrimonial liability of the Administration filed by the complainant here against the CSMHG.

- Copy of the medical history of the complainant in relation to the psychiatric medical care provided at the CSMHG from February 2014 to July 2018, and that the aforementioned center provided in December 2018 (hereinafter, HC 1).

- Copy of the medical history of the complainant in relation to the psychiatric medical care that was provided to him at the CSMHG from February 2014 to July 2018, and that the said center would have provided to the ICAM, and to which the complainant here would have had access to the file processed by the ICAM (hereafter, HC 2).

It is confirmed that the content of HC 1 and HC 2 is not identical, since in HC1 it is observed how clearly some paragraphs have been hidden, a fact that the same complainant points out could obey the concealment of subjective annotations made by professionals. Among the paragraphs contained in HC 2 (and not in HC 1), it is worth noting an annotation dated 05/16/2014, which contains the following text: *"lives in a disproportionately paranoid way the emotional breakup"*.

2. The Authority opened a preliminary information phase (no. IP 270/2021), 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 03/09/2021 the CoMB was required to report whether it had informed the CSMHG that the reporting person had been diagnosed with TPP; and, if so, report the date of the communication, the specific information that was communicated and the legal basis that would have enabled it.

4. On 09/20/2021, the CoMB responded to the aforementioned request through a letter in which it explained, on the one hand, that within the framework of the reserved information file that had been

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

initiated following the complaint made by Mr. (...) against the CSMHG, the letter written by this person on 01/31/2019 indicating that he had been diagnosed with TPP by another mental health center had not been transferred to the aforementioned center; and, secondly, that he had not facilitated either at no other time in the CSMHG this information about said diagnosis of TPP.

5. On 09/22/2021 and still within the framework of this prior information phase, the ASMHG - entity that manages the CSMHG - was required to report whether the CoMB had informed them that the reporting person had been diagnosed with TPP; and, in the event of an affirmative answer, report on the date of this communication and the specific information that would have been provided.

6. On 09/27/2021, the ASMHG responded to the aforementioned request through a letter in which it informed that *"the College of Doctors of Barcelona (CoMB) has not disclosed data to us relating to mental health, and specifically the diagnosis of TPP, relating to the reporting person"*.

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

As explained, the complainant complained that the CoMB had provided, on an undetermined date, but in any case between 01/31/2019 and 02/12/2019, medical information relating to his person in the CSMHG (managed by the ASMHG), specifically, a diagnosis of TTP.

In the context of this prior information, the CoMB has denied having provided the CSMHG with this specific information regarding the complainant. For its part, the CSMHG has also denied receiving this information regarding the complainant from the CoMB.

We are therefore faced with contradictory versions between the one provided by the referred entities and the person making the complaint. In this regard, it should be noted that, apart from the statements of the complainant here, there is no element available to corroborate the reported communication of information referring to his person, from the CoMB to the CSMHG.

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

On the other hand, it must be shown that the documentation provided by the complainant shows that he was treated by the CSMHG for more than four years (from February 2014 to July 2018), so it is clear that this center had a large amount of clinical information related to his person, information that was used by the CSMHG - and specifically a psychiatrist from the said center - to draw up the report of 02/12/2019 referred to by the complainant.

This would be supported, first, by what is set out in the same report, in the sense that TPP's diagnosis *"has been evident throughout this time, through its permanently distrustful, complaining and critical attitude (...)"* second, due to the fact that in the same clinical history provided by the complainant (HC 2) there is allusion to a "paranoid" behavior (as an example, the annotation: *"lives in a disproportionately paranoid way"*).

Consequently, the principle of presumption of innocence is applicable here as there is no evidence to prove the reported communication of data, and therefore the commission of an offense by the CoMB. In this sense, article 53.2.b) of Law 39/2015, of October 2, 2015, recognizes the right *"To the presumption of non-existence of administrative responsibility until proven otherwise"*. And, to the above, it should be added, in accordance with what was stated above, that the CSMHG itself maintained that the paranoid disorder of the complainant here would have manifested itself throughout the time he was treated at that center and, therefore, he would already be aware of this disorder before the reporting person disclosed it

information to the CoMB.

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 line 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. File the actions of prior information number IP 270/2021, relating to the College of Doctors of Barcelona.
2. Notify this resolution to the College of Doctors of Barcelona and to 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.

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

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.

The director,