

Carrer Rosselló, 214, esc. A, 1st 1st
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File identification

Archive resolution of the previous information no. IP 313/2021, referring to Badalona Serveis Assistencials, SA

Background

1. On 05/08/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Badalona Serveis Assistencials, SA, (hereinafter, BSA), on the grounds of 'an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant, Mr (...), stated that on 08/04/2021 he sent a message to his family doctor, through the "My Health" (LMS) platform and that, shortly after, he received a call from an administrator at CAP Lloreda – managed by BSA – who did not identify himself, to "indicate that a doctor will call me on August 16 to evaluate the ultrasound" . The complainant complained about the fact that administrative staff, without medical training, can not only access their health data through the LMS platform, but can also "assess and schedule a visit when they see fit".

2. On 05/10/2021 the Authority required the reporting person to, within ten days, provide documentation, screen prints, or any other data indicative of the commission of the events reported.

3. In response to the requirement indicated in the previous antecedent, on 10/10/2021 the reporting person provides the Authority with a screen printout of the e-consultation carried out on 08/04/2021, as well as the copy of the complaint submitted to BSA, after an administrator from CAP-Lloreda called him to schedule a visit with medical staff.

4. The Authority opened a preliminary information phase (no. IP 313/2021), 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.

5. In this information phase, on 01/12/2021 the entity reported by so as to report on the following aspects:

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- Identity and profile of the person who called the person making the complaint in relation to the message that the latter would have addressed to their GP through the "LMS" platform.
 - Means through which this professional was able to access the controversial message.
 - Reasons that would have justified access by this professional to the message of reference
 - Circuit implemented by BSA regarding the scheduling of medical visits, by the administrative staff. If the circuit is documented in a protocol or similar instrument, provide the copy.
6. On 12/17/2021, the response of Badalona Serveis Assistencials SA to the request for information made by this Authority was received. In this regard, the following is reported:
- "BSA has been able to identify that the employee of the CAP Nova Lloreda who contacted the complainant is Mrs (...), administrator of the center and technician in health documentation. His professional profile has been assigned, among others, the functions of scheduling visits with the center's health professionals.
 - In relation to the second point, let's explain how the circuit of the tool and consultation works: The person making the complaint recorded an e-consultation addressed to his family doctor. Following the circuit established by the Catalan Institute of Health (ICS), which manages the ECAP tool, it detects when this doctor does not have an agenda in the first 5 working days, and consequently generates an incidence in the administrative agenda (code Agenda 4CW). This incidence is transformed into a warning for the administrative profiles that manage the 4CW Agenda, which only shows them the title of the message that the citizen sent to his doctor in order to be able to schedule the visit. Thus, the message to which the administration had access through Agenda 4CW, had the following content:
"Doctor: (...) – Consultation on results of diagnostic tests / Ultrasound".
 - With regard to the third point, the reasons justifying the access by this administration to the aforementioned message are those set out in the second point. It should be noted that the administrative staff do not have access to all the content of the telematic conversations that take place between the citizen and the health professional through the e-consultation, but as explained, only they have access to see the title of the same e-consultation.
 - Finally, in relation to the fourth point, we inform you that the circuit implemented by BSA regarding the scheduling of medical visits by administrative staff is the one set out in the second point. In this regard, the patient is assigned an hour based on the doctor's schedule. However, if the patient considers that their consultation is very urgent and cannot wait, they have other options in order to be treated urgently. The e-consultation is a consultation tool between the citizen and the health professional that complements face-to-face care. However, and as it is informed during the processing of the same, for urgent inquiries or those that require an immediate response, you must contact 061 CatSalut Respon or go directly to the CAP

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or in the hospital emergency department. This circuit is the one established by the ICS for the framework of the use of non-face-to-face consultation tools".

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.

Based on the background story, it is necessary to analyze the reported events that are the subject of this resolution.

The complainant complains that, without her consent, a BSA administrator accessed her health data, through the LMS platform, and also called her to schedule a medical visit. For its part, the reported entity has communicated to the Authority the identity of the administrative officer who called the complainant on 04/08/2021, as well as the functions entrusted to her, highlighting, among others, the functions of scheduling visits with the center's health professionals. And, in relation to the operation of the LMS platform, he pointed out that the administration staff does not have access to all the content of the telematic conversations that take place between the citizen and the health professional through the tool and -consulta, but they only have access to see the e-consultation title, for the purpose of scheduling the appropriate visits.

In accordance with the above, the discrepancy between the complainant and BSA is focused on determining whether any access to health data by non-care personnel complies with data protection regulations. Well, for the purposes of discernment this matter, the regulation mentioned below must be kept in mind.

Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereinafter, RGPD) , provides in its article 6 that the processing of personal data will only be lawful if at least one of the following conditions is met:

- "a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;

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- d) the treatment is necessary to protect the vital interests of the interested party or another physical person;
- e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party
(...)"

With regard specifically to the processing of special categories of data, among which data relating to health is at the top, article 9 of the RGPD provides the following:

1. The processing of personal data that reveal ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation, and the processing of genetic data, biometric data aimed at uniquely identifying a person are prohibited physical, data relating to health or data relating to the sex life or sexual orientation of a natural person.

2. Section 1 will not apply when one of the following circumstances occurs:
(...)

h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of the Law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3.

(...)"

In this regard, Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter, LOPDGDD), provides in its article 9, regarding the treatment of special categories of data, the following:

"The data treatments provided for in letters g), h) ii) of article 9.2 of Regulation (EU) 2016/679 based on Spanish law must be covered by a rule with the status of law, which can establish additional requirements regarding its security and confidentiality.

In particular, this rule can protect the processing of data in the field of health when this is required by the management of health and social assistance systems and services, public and private, or the execution of a contract insurance of which the affected person is a party".

In the case at hand, it is necessary to bear in mind article 11 of Law 21/2000, of 29 December, on the rights of information concerning the patient's health and autonomy, and the clinical documentation that, in relation with the medical history, it has (the emphasis is ours):

"1. The clinical history is an instrument primarily intended to help guarantee adequate assistance to the patient. For this purpose, the care professionals of the center

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who are involved in the diagnosis or treatment of the patient must have access to the medical history.

2. Each center must establish the mechanism that makes it possible that, while assistance is provided to a specific patient, the professionals attending to him can, at all times, have access to the corresponding clinical history.

3.(...).

4. The staff who take care of the administration and management tasks of the health centers can access only the data of the clinical history related to said functions.

5. (...).

6. All personnel who use their powers to access any type of data in the clinical history remain subject to the duty of confidentiality".

In similar terms, article 16 of Law 41/2002, of November 14, basic regulation of patient autonomy and rights and obligations in the field of information and clinical documentation provides (the emphasis is ours):

"1. The clinical history is an instrument primarily intended to guarantee adequate assistance to the patient. The healthcare professionals of the center who carry out the diagnosis or treatment of the patient have access to the patient's clinical history as a fundamental tool for their adequate assistance.

2. Each center will establish the methods that enable access to the clinical history of each patient at all times by the professionals who assist them.

3. (...)

4. The administration and management staff of the health centers can only access the clinical history data related to their own functions.

5. (...).

6. The personnel who access the clinical history data in the exercise of their functions are subject to the duty of secrecy.

7. The Autonomous Communities will regulate the procedure to record access to the clinical history and its use.

From the precepts indicated, it follows that access to health data by non-health professionals for administrative purposes, as is the case, can be considered a necessary task in the course of the care process when it is linked to the development of their tasks.

With regard to the specific data processing that would have been carried out by the administration that called the complainant, BSA has announced that the administrative staff has access to the title of the e-consultations, hosted on the LMS platform, for the purposes of being able to schedule medical visits, and that the administration in question has been assigned these functions of scheduling visits with the center's health professionals. In this regard, it is not superfluous to demonstrate that the reported entity has also reported that its administrative staff does not

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has access to the content of the patients' clinical history, but can only access the content of the consultation, available on the LSM platform.

For all of the above, this Authority believes, given the circumstances of the case, that the processing of the data of the party making the complaint here cannot be considered illegal, given that it was carried out by administrative staff to schedule a medical visit, in the exercise of the assigned tasks, and consequently, complying with the provisions of the data protection regulations, in line with the health regulations.

2. 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, 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 made clear in the instruction of the procedure: "a) The non-existence of the facts that may constitute the infringement"

Therefore, I resolve:

1. File the previous information proceedings number IP 313/2021, relating to Badalona Serveis Assistencials, SA
2. Notify this resolution to Badalona Serveis Assistencials, SA and 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.

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Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,

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