

## File identification

Archive resolution of the previous information no. IP 332/2021, referring to the Terrassa Mutual Assistance Foundation.

## Background

1. On 08/20/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Terrassa Mutual Assistance Foundation (hereinafter, FAMT), on the grounds of an alleged breach of the regulations on personal data protection .

Specifically, the complainant, a worker at the Hospital Mútua de Terrassa (hereafter, the Hospital) until the day (...), complained of two improper accesses to his electronic medical record (HC3), both carried out from the Hospital on 06/29/2021 and 07/21/2021. The person stated that the first access was carried out while he was on leave from work and that "*therefore, they were able to know the reason for it and my entire health process*" and that, since there is a medical history "*work*" nobody should have accessed his HC3.

Along with the complaint, provide, for what is of interest here, the following documentation:

a) An image capture of "*My Health*" (personal digital health space that the Department of Health makes available to citizens and through which users, among other information, can check access to the their shared history -HC3-). This image shows the two reported accesses to the HC3:

- Access from the Hospital on 06/29/2021 at 11:24 a.m., in which the registers were consulted consecutively: "*Summary clinical history information*" and "*vaccination information*".

"*Summary clinical history information*" and "*vaccination information*" records were consulted, also consecutively .

b) Email that the complainant here sent to the FAMT on 07/09/2021 asking for explanations about the access to his HC3 that had been carried out from the Hospital on 06/29/2021 at 11:24 a.m.

c) Copy of the letter that on 29/07/2021 the data protection representative of the FAMT addressed to the person making the complaint, in response to his letter of complaint about access to his HC3.

2. The Authority opened a preliminary information phase (no. IP 332/2021), 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 11/10/2021 the FAMT was required to provide the record of accesses to the medical history of the reporting person in the period between 29/06/2021 and 21 /07/2021. Also, it was requested to report on the reason that justified each of the

accesses and the contribution of the Register of Processing Activities (RAT) in force in the months of June and July 2021.

4. On 10/26/2021, the FAMT responded to the aforementioned request through a letter in which it stated the following:

- 4.1. That access to the HC3 from here complainant on 06/29/2021 at 11:24 a.m., it was carried out by a person with a nursing profile from the Occupational Risk Prevention Service of the Hospital de Mútua de Terrassa, in accordance with the functions entrusted to her, to verify if the worker here reporting had have been vaccinated in a SISCAT center ( comprehensive health system for public use), as this specific information is not recorded in the FAMT databases .
- 4.2. That access to the complainant's HC3 on 07/21/2021 was carried out by a person with the profile of a doctor from the Occupational Risk Prevention Service of Mútua de Terrassa, in accordance with the functions he/she has entrusted, in order to carry out the relevant checks and thus respond to the complaint that the complainant here had made on 07/09/2021 asking for explanations about the access to his HC3 of 06/29/2021.
- 4.3. That the legal basis that legitimized the access of 06/29/2021 is that of article 6.1 letters c), d) and e) of 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 movement thereof (hereafter, RGPD). That the legal obligation derives from several normative precepts ' among these: the General Public Health Law (art. 33.1 bh), Royal Decree 664/1997, on the protection of workers against risks related to exposure to biological agents ( art. 8.3), Law 31/1995, of 8 November on the prevention of occupational risks (arts. 14.1, 22.4.2º paragraph and 31), Law 41/2002, of 14 November basic regulation of the autonomy of patients and rights and obligations regarding information and clinical documentation (art. 16.5) and Decree-Law 48/2020, December 1, on measures of an organizational nature in the health, social and public health field to deal with the health crisis caused by COVID-19 and amending Decree Law 30/2020, of August 4 and Decree Law 41/2020, of November 10, in relation to the Vaccination Registry of Catalonia (article 3.2) ". That the cited legal bases are complemented by the concurrence of the exceptions provided for in article 9.2, letters b), h), ii) of the RGPD.
- 4.4. That in the current context of the pandemic, the health authorities have approved several instruments with "specific provisions regarding the staff who provide services in health centers, and which include the collaboration of risk prevention services in risk management and the control of the spread of the pandemic". Specifically, at the level of Catalonia, the "Guide for action and collaboration of the Occupational Risk Prevention services to deal with the COVID19 pandemic" and, at the level of the state, the "Procedimiento de actuacione para los Occupational risk prevention services against exposure to Sars-cov-2".
- 4.5. That it is also necessary to take into consideration the criterion of the Catalan Data Protection Authority contained in its opinion CNS 37/2021, issued on the occasion of " the consultation formulated by an entity on the transfer of data of professionals

*vaccinated against the COVID- 19" and also the report nº 0017/2020 of the Spanish Data Protection Agency, on the processing of data resulting from the current situation arising from the extension of the COVID-19 virus.*

- 4.6. That the authorization to access on 21/07/2021 the complainant's HC3 " *is based on a legal obligation of the data controller (...)*", to respond to the complainant's complaint about access of the 29/06/2021. That, in order to prove this, the e-mail of the person making the complaint addressed to the FAMT (of 07/09/2021) is provided.
- 4.7. That, " *in accordance with the provisions of article 11.4 of Catalan Law 21/2000, of 29 December on the rights of information concerning the patient's health and autonomy and clinical documentation, and article 16.4 of State Law 41/2002, of November 14, basic regulatory framework for patient autonomy and rights and obligations in the field of information and clinical documentation, the administration and management staff of health centers can access data from the clinical history related to said functions, subject to the duty of secrecy.(...)*". That, to accredit the fulfillment of the duty of secrecy, the confidentiality commitments signed by the two professionals who have carried out the accesses " *within the framework of the tasks that have been assigned to them" are provided* .

In order to certify the legal basis of the accesses, the FAMT provided various documentation:

- An email from the Catalan Health Service (hereinafter, CatSalut), dated 01/05/2021, addressed to the FAMT, from which it is worth highlighting, literally, the following provision: "Each center (Hospital or CAP) *must have the census of all its workers differentiated into 4 categories which are the ones requested by the Ministry's registry: a. Specialized or primary care nurses, b. Specialist or primary care doctors, c. Other AE and AP health personnel, d. Non-health personnel of AE or AP. On a daily basis, you must report to the coordinator of the Vaccination Mobile Team (EM) (for her to send it to Public Health): - The N of people vaccinated and who have refused vaccination, - The % for each category of "these 4"* .
- Recommendation of the Type Code La Unió -Association of Health and Social Entities-, to which the FAMT is affiliated, dated 15/01/2021, entitled " **RECOMMENDATION: ON THE REQUEST FROM THE CATALAN HEALTH SERVICE FOR THE CENSUS OF PROFESSIONALS FOR MONITORING OF THE % COVERAGE OF THE COVID19 VACCINES**" , of which the following mention should be highlighted, literally: "Any SISCAT entity, including the Catalan Health Service, could check whether a professional has received the vaccine, so that a priori it would not be necessary for the entity to ask the professional".
- An email from CatSalut, dated 01/20/2021, addressed to the FAMT, regarding "the legitimization of your request for information on the personal data of Mútua Terrassa employees" and of which it is worth noting, literally, the following paragraph: "So, this precept [art. 3 of Decree Law 48/2020] would enable the communication of specific data requested and those established by the health authorities, in accordance with the vaccine strategy that is defined at each moment, with the specific purpose indicated by the same article to allow that the monitoring and follow-up of this strategy be carried out , and to know the evolution of the coverage, including all the target population that gradually joins it."

- A certificate issued by Mútua Terrassa's Human Resources Manager relating to the professional profiles of the people who accessed the complainant's HC3, and detailing the functions entrusted to them.

Also, the FAMT provided the following documentation that had been required:

- The record of access to the HC3 of the reporting person.
- The RAT of the FAMT in force during the period of time in which the reported events occur and of which it is necessary to emphasize the purpose of the treatment "*Prevention of Occupational Risks*", which is specified in the "*Management of prL , safety, diseases/accidents labor, prevention campaigns, public health surveys (COVID 19), worker vaccination campaign (COVID 19)*".

## 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, a worker at the Terrassa Mutual Hospital during the time period in which the reported events occurred, stated that, on 06/29/2021 and 07/21/2021 , the FAMT accessed his medical history without his consent and that on those dates, when he was on sick leave, they would have been able to access the reason for it as well as his entire health process. In addition, it highlighted that there was a medical history at work, and that for this reason, they should not have accessed their HC3.

The FAMT, in summary, argued that the first of the reported accesses (of 29/06/2021) would be justified based on the health regulations and the guides and protocols cited in section 4.3 of the 4th precedent. And that the second of the accesses (21/07/2021) had been carried out to respond to the complaint made by the complainant here about the reason for the first access.

On the other hand , the FAMT certified - through the contribution of the access register - that the two accesses to the HC3 of the complainant here were carried out, respectively, by a person with a nursing profile who was entrusted with, among other functions, "*the administration of vaccines, and the performance of administrative tasks and monitoring of compliance with the strategy of the Department of Health of the Generalitat of Catalonia in relation to the vaccination of company workers and entities of Mútua Terrassa*"; and a person with the profile of a doctor , who was entrusted with the tasks of "*supervision of the tasks of the Risk Prevention Service relating to the fulfillment of the vaccination strategy for the workers of Mútua Terrassa's companies and entities*".

Well, apart from the statements of the complainant here, this Authority does not have any element that allows us to question the statements of the FAMT about the legitimacy of the controversial accesses, which they have argued in a reasoned and sufficient way. Thus, it justifies the first access (on 29/06/2021) carried out by a professional nurse who was entrusted with the tasks of preventing occupational risks, in order to comply with the health regulations in force at that time regarding the review of the vaccination status of the entity's workers, to the extent that this information was not included in the FAMT databases (therefore, with the coverage of the legal basis of article 6.1. c/ and the concurrence of the exceptions of article 9.2 g/, h/, i/ of the RGPD). And the second of the accesses (from 21/07/2021) was carried out by the person responsible for the Occupational Risk Prevention Service of Mútua Terrassa, with the profile of a doctor/ sssa , in order to check the justification of the previous access, following the complaint that the complainant here had made in which he asked for explanations about said access.

In this way, the principle of presumption of innocence is applicable, provided for in article 53.2 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations, which recognizes the right "*to 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 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 the dismissal of the file and the archive of actions when the proceedings and the tests carried out prove the non-existence of infringement or responsibility. This resolution will be notified to the interested parties*". And article 20.1) of the same Decree determines that dismissal proceeds: "*b) When the facts are not proven*"

Therefore, I resolve:

- 1.** File the previous information proceedings number IP 332/2021, relating to the Terrassa Mutual Assistance Foundation .
- 2.** Notify this resolution to the Fundació Asistencial de Mútua de Terrassa 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,

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