

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

File identification

Archive resolution of the previous information no. IP 346/2021, referring to the Catalan Health Institute.

Background

1. On 27/10/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Catalan Institute of Health, on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the complainant (Mrs. (...)) complained of improper access to her medical history, specifically, of two accesses that would have taken place from the CAP (...) on the 5th and 6th of May 2021, at 9:17 am and 8:35 am, respectively. The complainant stated that she was a user of CAP Sant (...), so access from the CAP (...) - center where she provides services - would not be justified.

The complainant provided the record of access to his clinical history that the ICS would have provided him, in which he highlighted the two accesses carried out by the CAP (...) which he considered unjustified.

2. The Authority opened a preliminary information phase (no. IP 346/2021), 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 10/05/2021 and 10/29/2021, the reported entity was required to comply with the following:

- Provide the record of access to the medical history of the reporting person, corresponding to May 5 and 6, 2021.
- Report in detail on the reason that justified each of the two accesses controversial

4. On 27/10/2021 and 09/11/2021 the ICS responded to the aforementioned request through separate written statements in which it set out the following:

- *"Regarding the access on 05/05/2021 09:17, [the complainant] was given an extraction summons requested by the Midwifery Service located in the Center of (...), center and service in which Mrs. is visited and monitored. (...)"*.

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- *"Regarding the accesses on 06/05/2021 at 08:35 (simultaneous accesses), it must be stated that it refers to two screens in which no clinical documentation is found. The professional accessed the scheduling screen, which is the visit scheduling tool and from this accessed pending administrative tasks but did not perform any action with the user requesting access".*

The reported entity attached a copy of the access register, which states that the two reported accesses were made by the same professional, with the following justification: a) access on 05/05/2021 "extraction summons"; and, b) access 06/05/2021 "scheduling screen for reasons of EACAP", "Creation of a patient notice/processing of a pending patient task".

5. In view of the information provided by the ICS (that the reporting person was a patient of the midwifery service of the CAP (...), and that access would be justified by the assistance provided), through office of 12/ 11/2021 (notified on the same day) the complainant was given a 10-day deadline to confirm or deny it. In the same office he was expressly warned that if he did not respond to this office, the information provided by the ICS would be taken for granted.

The deadline granted to the person making the complaint has been far exceeded without him having made any statement about it.

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 person making the complaint complained about alleged improper access to his medical history carried out by the CAP (...) on May 5 and 6, 2021. The person making the complaint claimed that she was a user of CAP Sant (...), so access from CAP (...) - center where she provides services - would not be justified.

The ICS, in response to this Authority's request for information in order to justify the two accesses that had been the subject of a complaint, reported that the person making the complaint was a user/patient of the CAP Midwifery Service (...) , and that the two controversial accesses they were justified to the extent that they were linked to assistance from this service.

In view of the above, the Authority transferred the information provided by the ICS to the reporting person in order for him to confirm or deny it, and he was expressly warned that, in the event

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if you don't answer within 10 days, it would be considered true. Well, as it has been advanced in the antecedents, the reporting person has not responded to this letter, so it must be understood that the accesses subject to the complaint were justified and obeyed welfare reasons.

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 facts that have been addressed in this resolution, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is appropriate to agree to its archive.

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 *""c) When the proven facts do not manifestly constitute an administrative infraction"*.

Therefore, I resolve:

1. Archive the actions of prior information number IP 346/2021, 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.