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File identification

Archive resolution of the previous information no. IP 402/2021, referring to the Catalan Institute of Oncology

Background

1. On 07/10/2021, the Authority received a letter in which a person filed a complaint against the Catalan Institute of Oncology (hereafter, ICO), on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the person making the complaint highlighted the following facts: "For the second time I have received correspondence addressed to my ex-wife, from whom I have been divorced since 2007, at my address. The address where I receive the notifications she has never lived there.

I don't understand how they can tie this address to her. There must be some crossing of data, going through the data of the children we have in common?". The complaint was accompanied of a photograph of the envelope sent to the complainant's home, which shows that the recipient was the lady (...), from whom the complainant is divorced and who, according to him, would never have resided at the home in question. The envelope contains a reference to the Colon and Rectal Cancer Early Detection Program, and identifies the Catalan Institute of Oncology as the sender of the information.

2. The Authority opened a preliminary information phase (no. IP 402/2021), 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 03/15/2022, the complainant was asked, in order to improve the documentation provided, within ten working days, to report on the approximate date of receipt of the correspondence reference.

4. On 16/03/2022 the complainant confirms to the Authority the receipt of the correspondence for the month of September 2021.

5. On 17/03/2022 this Authority required the reported entity to report on the following aspects:

- Legal basis that legitimizes the sending of correspondence addressed to the lady (...) at the address located in (...).

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- Presentation of arguments that justify the sending of correspondence addressed to Mrs. (...) at the address of reference.
 - Any other consideration that you think may justify sending correspondence addressed to Mrs. (...) at the address referred to.
6. On 03/31/2022, the ICO's response to the information request made by this Authority was received. In this regard, the following is reported (the emphasis is ours):
- That "The correspondence is sent within the framework of the Colon and Rectal Cancer Early Detection Program of the Department of Health, promoted, planned and coordinated by the Oncological Master Plan. (...) The Catalan Institute of Oncology – ICO – acts as one of the Territorial Screening Offices entrusted with the management, monitoring and evaluation of the Program in its territory. One of the tasks included in this role is the management and sending of invitations to a part of the public, the so-called target population, so that they can participate in the program. (...)
 - That "The legal bases that legitimize the processing for this purpose of the data to Ms (...), and the consequent sending of the invitation by ordinary mail, are the following: Art. 6.1 e) RGPD – Fulfillment of a mission carried out in the public interest or in the exercise of powers conferred on the data controller. Art 9.2 h) RGPD – The treatment is necessary for the purposes of medical diagnosis, provision of health care or treatment, or management of health care systems and services, on the basis of the law of the Union or of the Member States” .
 - That, "The main source that provides the ICO with data on the target population is the Central Register of Insureds -RCA-. This is an automated file that depends on the Catalan Health Service, regulated by Decree 29/1995 of January 10 and Order SSS/ 250/2002 of July 1. This register allows the unique identification of CatSalut insured persons, by means of the personal identification code (CIP), the management and consultation of their data and the updating of these at the health service provider units. Among the planned uses of RCA, apart from managing the individual health card through identification, with a unique and universal personal code, there is also the localization of people in the territory and the allocation of basic care structure. In other words, correspondence is being sent to the Lady (...) due to the fact that in May 2021, when the RCA data were extracted to start the screening campaign in her area of residence, she was assigned to a health area where the management of the Program is entrusted to the ICO as a technical office. For the same reason these letters arrive specifically at (...) [address of the complainant] since it is the address that was designated in the RCA at the time when the round of invitations to the ABS began".
 - That, "The RCA is a file that does not manage the ICO, but that it depends directly on the Catalan Health Service, and to which the Institution only has access to carry out

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inquiries RCA data are mainly provided by the interested persons or the person exercising their legal representation or provided by the centers or professionals involved in the healthcare provision.

The letter also informs that, subsequent to the sending of the correspondence for the months of September and November 2021, there has been evidence of the modification of the data relating to the address, so that no more correspondence will be sent at home of the complainant, addressed to Mrs. (...).

Finally, in the letter it is stated that, following the complaint submitted, all the channels of entry of requests would have been reviewed and no exercise of rights affecting the data relating to the address in question would have been identified .

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, on two occasions, he received correspondence at his address, addressed to Mrs. (...).

For its part, the ICO has informed the Authority that the reference correspondence corresponding to his ex-wife was sent to the complainant's address given that it is the address that was reported in the Central Register of Insureds (in hereinafter, RCA), which depends on the Catalan Health Service, and which is the data source used by the claimed entity when it started "the round of invitations" in that basic area of health.

Well, for the purposes of discerning whether an infringement of the data protection regulations occurred from the ICO, it is necessary to bear in mind the provisions mentioned below.

Article 6 section e) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of these data (RGPD) provides that the treatment is lawful when it is necessary to fulfill a mission carried out in the public interest or

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in the exercise of public powers conferred on the data controller, among other conditions.

On the other hand, Article 9 RGPD prohibits, among others, the processing of health data unless the following circumstance occurs: "The processing is necessary for the purposes of preventive or occupational medicine, assessment of the the worker's capacity for work, for medical diagnosis, for the provision of health and social assistance, on the basis of the law of the Union or of the member states or by virtue of a contract with a health professional and without prejudice to the conditions and guarantees that provided for in section 3".

In this regard, article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights, relating to the processing of data due to legal obligation, public interest or the exercise of public powers, provides (emphasis is ours):

"1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when this is provided for by a rule of European Union law or a rule with legal status, which can determine the general conditions of treatment and the types of data subject to it, as well as the transfers that are appropriate as a result of compliance with the legal obligation. This rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU)

2016/679. 2. The processing of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge, in the terms provided for in article 6.1 e) of the Regulation (EU) 2016/679, when it derives from a competence attributed by a rule with the status of law."

Well, as a preliminary matter, it should be noted that, according to the Statutes of the ICO, approved by Agreement GOV/24/2015, of 24 February, modified in 2015 and 2018, the Catalan Institute of 'Oncologia is a public company that has the status of its own instrumental means and technical service, and that is attached to the Catalan Health Service.

In this regard, Law 15/1990, of 9 July, on the health system of Catalonia, in article 7.1, among others, provides that the functions of the Catalan Health Service are:

d) The management and execution of actions and institutional programs in matters of health promotion and protection, disease prevention, health care and health care and rehabilitation.

Likewise, the second section of article 7 provides that, for the management and execution of institutional disease prevention programs, the Catalan Health Service can carry out the functions entrusted directly, through the organs or the bodies that are competent or can be created for this purpose, if applicable.

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Well, as part of this preliminary information phase, it has been confirmed that the ICO is going to send the reference correspondence, in the exercise of its functions of management, monitoring and evaluation of the Prevention Program referred to in the first antecedent, and that the address of the recipient of the correspondence would have been obtained from the RCA. Likewise, and as reported by the claimed entity, the data contained in the RCA are obtained, mainly, of the interested persons or of the centers or professionals involved in healthcare provision.

It follows from all the above that the complainant received correspondence from Ms. (...) at his address, given that the RCA, which depends on the Catalan Health Service, contained this address for the purposes of the notifications to be made to Mrs. (...). And, taking into account that, as confirmed by the ICO, he is neither the holder of this Register, nor has he received any request that refers to the address in question or Ms. (...), this Authority does not appreciate any unlawful processing of personal data by the claimed entity.

2. In accordance with everything that has been set out in the 1st 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 actions of prior information IP number 402/2021, relating to the Catalan Institute of Oncology.
2. Notify this resolution to the Catalan Institute of Oncology 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. One can also be directly interposed

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administrative contentious appeal 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, regulator of the administrative contentious jurisdiction.

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

The director,

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