

File identification

Archive resolution of the previous information no. IP 404/2021, referring to the Comprehensive Health Consortium

Background

1. On 10/8/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Consorci Sanitari Integral (hereafter, CSI) , on the grounds of an alleged non-compliance with the regulations on personal data protection .

The complainant, who provided services at Dos de Maig Hospital as (...), complained that his boss, (...) (head (...)), and who usually performs his functions from of Hospital General de l'Hospitalet (henceforth, HGH), would have revealed to a third person who also provides services at HGH, his and his wife's data (specifically that his wife had tested positive for coronavirus and that he had undergone a PCR test, with a negative result), without his consent.

Specifically, the complainant stated the following:

- 1) That on 26/01/2021, his wife tested positive for coronavirus, so, being his cohabitant, he reported this fact to the Occupational Health of his work center where they performed a PCR test.
- 2) That he communicated this information to his boss, (...), so that he could organize the service.
- 3) That he also provided this information to two colleagues from the department with whom he shares a location.
- 4) That on 01/27/2021, he received the negative result of the PCR test, reporting the same to his boss and his colleagues.
- 5) That on 28/01/2021 at 07:40, he received a WhatsApp message from a person who works at the HGH in which he showed his interest in his health and that of his family, since in " (...) " he had told him that his wife " *had tested positive* " .
- 6) That on 04/23/2021, in a conversation held personally with (...) in front of other colleagues from the department (which the complainant identifies in his complaint), he admitted to him that he had revealed to a third person the disputed data.
- 7) That on 07/12/2021, he sent an email to the data protection representative of the CSI explaining the facts, and that he replied to the effect that "he does not find that my rights have been violated in the matter of data protection since the (...) has not entered my clinical history (...). In addition, he tells me that the health data is given to a colleague who is the Coordinator (...). This is not true, since until June 29, 2021 it is not communicated that Ms. (...) she is the coordinator (...), but this does not imply that she has to be informed of the reason for the termination of an employee and much less when permission has not been given for it (...)" .

The reporting person must provide, together with his report, various documentation in relation to the facts reported.

2. The Authority opened a preliminary information phase (no. IP 404/2021), 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 25/01/2022 the CSI was required to report on the source of the information that the (...) had on the health of the complainant and his wife.) (head of complainant). Likewise, to report whether the (...) disclosed said data to a third person and, if so, indicate which specific data he would have disclosed and in which context and circumstances such disclosure would have occurred.

4. On the same date, 25/01/2022, the CSI responded to the aforementioned request through a letter in which it stated the following:

- That the (...) stated that he learned the information directly from the reporting person. That when the complainant reports the incident to the Data Protection Officer, an audit of access to their health data was carried out and it was verified that no improper entry had occurred. That Occupational Health does not communicate the health data of professionals and the complainant was informed about this.
- That *' it seems that the communication takes place in the work environment, without obvious coercion and in a free and voluntary manner on the part of the reporting person' .* That the (...) stated that *' he did not receive a warning not to share the information and understood it as a personal communication in the field of work, between colleagues. '*
- That the (...) acknowledged having shared the health information of the person here denouncing with the professional who at that time was helping him manage the (...) between the different centers. That the (...) acknowledges that he shared with this person the same data that the same complainant revealed to him *"in the same context and circumstances cited in the previous response"*.

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 fact that is the subject of the present filing resolution.

As stated, the complainant complained that his boss had disclosed his and his wife's medical health data, related to the results of tests for coronavirus, to a worker who provided service at another center of work of the CSI (specifically, at the HGH).

The CSI, in its written response to the request, explained that it was the complainant himself who provided his boss ((...)) with the information concerning him and his wife, that this revelation occurred 'in a at work, without obvious coercion and freely and voluntarily' and that the (...) 'understood it as a personal communication in the field of work, between co-workers'; that the (...) acknowledged having shared the controversial data with a colleague - who at the time was helping him manage the department - in the same context (sharing information between colleagues) . Also, the reported entity reported that, as part of the inquiries carried out internally, they found that there had been no improper access to the reporting person's health data.

In the case at hand, the complainant himself has acknowledged that he provided his boss, in the context of a conversation, with the information relating to the results of the coronavirus tests to which he and his wife had undergone (being these negative and positive, respectively), and that he did it voluntarily for the purposes of organizing the service. For its part, the CSI has admitted that the (...) communicated this data to another worker who at the time was collaborating in the organization of the service. In accordance with this, it must be concluded that the communication of the data relating to the result of the here complainant's coronavirus tests, together with the information relating to the fact that a close contact of that person had tested positive (and that could justify the complainant's absence from his workplace in person), it was information that became necessary for organizational purposes, so such action would be in accordance with data protection regulations. It is true that the specific information relating to which the close contact of the complainant who had tested positive was his wife, was not necessary for the organizational purpose of the service, but it cannot be overlooked that this information was provided in a work environment, of trust between colleagues (the proof is that the complainant also disclosed it to other colleagues), so it would be disproportionate to hold the CSI responsible for a breach of the principle of data confidentiality in the context analyzed here.

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 proven that the CSI has committed any act that could be constitutive of 'some of the infractions provided for in the legislation on data protection, it is necessary to agree on 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, states that no charges will be drawn up and the file will be dismissed and the archive of the proceedings, when the diligence and tests carried out do not prove the responsibility of the alleged infringer .

Therefore, I resolve:

- 1.** File the previous information actions number IP 404/2021, relating to the Integral Health Consortium.
- 2.** Notify this resolution to the Consorci Sanitari Integral 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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