File identification

Archive resolution of the previous information no. IP 429/2021, referring to the Consorci Sanitari de Terrassa (CAP Antón de Borja).

Background

1. On 10/22/2021, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the CAP Antón de Borja - managed by Consorci Sanitari de Terrassa (hereinafter, CST)-, due to an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant stated the following:

1.1 That on 08/17/2021 he received emergency medical attention at the Parc Taulí Hospital in Sabadell, that the doctor who treated him offered him medication to treat the inflammation and pain, but that he did not accept it because he thought he had enough medication at home;

1.2 That when, upon arriving home, he realized that he did not have enough medication, he called his CAP (CAP Antón de Borja) so that a medical professional would attend to him and prescribe him new medication;

1.3 That the person from his CAP who attended to him told him that, in order to attend to his (telephone) request, he had to send the emergency report issued by the Parc Taulí Hospital by email to the address CRB@CST.CAT , which he did at 17:11; i

1.4 That same day 08/17/2021, at 6:55 p.m., the same CAP receptionist who had attended to him on the first call, informed him that the doctor on duty had added Nolotil to his electronic prescription.

In relation to what was said, the complainant complained about the fact that the CAP asked him to send clinical documentation by email, thus enabling non-health personnel to access his medical data.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 429/2021), 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 01/25/2022 the CST was required to report on several issues related to the events reported.

4. On 9/02/2022, the CST responded to the aforementioned request through a letter in which it stated the following:

- That " *The prescription of medicines by a doctor is not carried out by the simple demand of the patient, but, in addition, it must be motivated and referenced from a specific diagnosis, so that the healthcare professional must be aware of the clinical situation that motivates and justifies a certain prescription, either directly, for having attended to the patient personally, or indirectly, to have evidence, with the corresponding clinical care report, of the patient's clinical picture, in the form that the doctor personally validates and contrasts the opportunity and convenience of a certain medication."*
- That *"The medical reports of the care acts are not incorporated into the HC3 system immediately, but the transfer of information is carried out from one day to the next, so that, in general, from the "following clinical assistance in a public center, the information is already available and accessible to the entire public Health network, so it is unnecessary to provide a copy of the clinical report."* That, in the case at hand, it should be noted that when the complainant here requested that a CAP doctor prescribe him a medicine for the pain, the report of the medical care provided that same day to the patient at the Hospital Parc Taulí was not yet incorporated into HC3 and, therefore, was not available and accessible to CAP healthcare professionals.
- That in the case we are dealing with, the patient was interested, by telephone, in care management, in relation to updating his clinical picture and at the same time requesting a medical prescription. That " *The management of this patient's request by telephone responded to the interest and convenience of the two parties involved, patient and CAP. The patient, to not have to travel. And the CAP, to save resources and at the same time avoid face-to-face assistance in the center. The patient's request was resolved in less than two hours."*
- That, given the time that had passed, they could not identify the specific person who interacted with the complainant on the day of the events, but that the professional profile of the people who answer the phone are GPAC workers, framed within the administrative functions , within " *Group 6. Para-care personnel with qualifications and/or professional or technical training"* of the Collective Agreement. And that, within the organization of the assistance activity, it was not contemplated that the optional staff answer the phone directly ' *without prejudice to the fact that the call can be diverted to them, if so required'.* That GPAC professionals themselves are the ones who receive and have access to the emails received.
- That in the specific case, *based on the story presented by the patient, the pandemic situation at the time of the events and the usual practice criteria, the patient should be informed that there would be no record (until the next day) of the care received on the same day in another hospital, which is why his referring doctor, that same day, could not prescribe such medication if he did not have access to the clinical report. Likewise, it should be indicated in the patient that he could personally provide the clinical report of the same day, and well, he could send it, as an attached document, in an email addressed to the indicated address, so that the administrative professional who receives the e-mail would send it internally to his reference doctor, so that he could formalize, if he considered it appropriate, the medication order, based on the clinical report of that same day."*
- That " *The receipt of these emails does not imply or entail that administrative professionals have indiscriminate access to documents and information of clinical content, limiting themselves to their referral to the corresponding practitioner and only accessing if for the reason of their own management task and administration it is essential and necessary to do so, in the same way as is done with the rest of the operations, management and interventions carried out by the patient management staff themselves."*

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 stated that he had called CAP Antón de Borja to ask for a prescription for pain medication that he had refused that same day when attending the emergency room at the Parc Taulí Hospital in Sabadell, thinking that he already had enough medication at home his That the person who answered the phone asked him to send by e-mail the emergency medical report that had been given to him that same day at that hospital so that a CAP doctor could quickly prescribe the requested medication. In relation to this, the complainant complained that the CAP asked him to send clinical documentation by e-mail, enabling non-health personnel to access his confidential medical data.

In view of the above, it is necessary to analyze whether the people who managed the e-mails received at the CAP were entrusted with functions that justified their access to the clinical information that could eventually be received at the CAP through this channel, as would be the case if is addressed here.

Well, for the purposes of discerning this matter, you must bear in mind the regulation mentioned below.

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;
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 who are involved in the diagnosis or treatment of the patient must have access to the clinical 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 indicated precepts it follows that access to health data by non-health professionals for administrative purposes, as would be the case, it can be considered a necessary task in the course of the healthcare process when it is linked to the development of their tasks.

In this regard, the CST has reported that the person who managed the e-mails was authorized staff, that the professional profile of the people who answered the phone and managed the e-mail mailbox are the workers of the unit ' *Patient Management and Care for Citizen* ', and that this staff was responsible for the administrative functions, and they were included in " *Group 6. Para-assistance staff with qualifications and/or professional or technical training"* of the Collective Agreement. Likewise, he informed that the function of this staff with regard to the documentation received, is limited *to "referring it to the corresponding doctor and only accessing it if, due to the own management and administration task, it is essential and necessary to do so , in the same way as is done with the rest of the operations, management and interventions carried out by the same patient management staff* '.

To the above it should be added that telephone attention was an option promoted at the root of the pandemic to prevent face-to-face as a measure to contain the spread of COVID, and for the protection of public health and safety healthcare for professionals and patients; that the option of sending by e-mail responded to the interests of both parties, literally: *"The patient, to not have to travel. And the CAP, to save resources and at the same time avoid face-to-face assistance in the center";* and that the option of sending the documentation via e-mail was an alternative way to the face-to-face care of the patient, since he " *could personally provide the clinical report"* that was essential in order to carry out the prescription of medication

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 unlawful, given that it was carried out by administrative staff in the exercise of the assigned tasks, and consequently, complying with the provisions of the data protection regulations, in line with the health regulations.

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, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, should be archived.

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 liability. This resolution will be notified to the interested parties"* . And article 20.1) of the same Decree determines that the dismissal proceeds: " *a) When the facts do not constitute an administrative infraction".*

Therefore, I resolve:

1. File the previous information actions number IP 429/2021, relating to the Consorci Sanitari de Terrassa.

2. Notify this resolution to the Consorci Sanitari de Terrassa and the person making the complaint.

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,