

In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 442/2021, referring to the Catalan Health Institute (Hospital (...)).

Background

1. On 04/11/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Hospital (...), of (...) (in forward, (...)) - dependent on the Catalan Institute of Health (ICS) -, due to an alleged breach of the regulations on the protection of personal data .

The complainant, who identified himself as (...) of the trade union section of the General Confederation of Labor in (...) (hereinafter, CGT), presented his complaint against (...), for the way the entity carried out the transfer of documentation from the archive of the CGT trade union section to a different space located within the hospital. In this regard, he stated that, on 03/10/2020, by order of the manager of (...), *"the hotel supervisor accompanied by the foreman hired by the hospital and several operators, as well as members of private security hired by the hospital, accessed the premises where we had our file by force"* by extract all the documentation they had there filed, *"among which there were affiliation records, information about complaints that we were preparing and/or are in progress against the same hospital and/or the ICS, etc."* . Next, he explains that representatives of the management team of the (...), *the lawyer and the head of maintenance* appeared , who commented that the documentation would be moved to the third floor of the (...), but that he does not know if this would have been his final destination. In the last one, the complainant makes three requests: 1.- the return of all the documentation; 2.- have a space where you can keep said documents; 3- measures are taken to prevent events like the ones that happened from happening again.

2. The Authority opened a preliminary information phase (no. IP 442/2021), 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 02/11/2022 the reported entity was required to report, among others, on whether the reporting person's account of events was correct, and in such case, on the legal basis that would legitimize the processing of data consisting in the change of location of the documentation with personal data that the trade union section of the CGT had in its file. Also, it was required to be informed if during the transfer of the documentation, the people who carried out said action had access to the personal data contained in said documentation, and what were the security measures adopted to maintain confidentiality of the personal data contained in the referenced documents.

4. On 21/11/2022, the (...) responded to the aforementioned request through a letter in which, among others, he stated the following:

- That following the union elections in (...) " *two unions that until then had no representation on the Board obtained representation: USAE and CSIF. Consequently, we had to start looking for two spaces, two trade union premises, where these new representations could carry out their work, to guarantee compliance with the provisions of art. 8 section 2 letter c) of Law 11/1985, of August 2, on freedom of association.*"
- That " *At that time, the CGT, CATAAC and UGT unions used, in addition to their respective offices, other annexes that were empty on that floor. As a possible solution on the part of the General Services Directorate of the hospital, it was proposed to the Personnel Board that these unions vacate these additional spaces that they were using. He was warned several times of the need to free the occupied spaces in order to carry out the reforms and thus be able to make room for his colleagues from other unions. In the case of CATAAC and UGT, these unions released the spaces, but CGT ignored the request of the rest of the Personnel Board, the Personnel Directorate and the Hospital Directorate. After several warnings and communications, verbal and in writing, about the start date of the works and the maximum deadline for leaving the space free, CGT continued to refuse to empty the additional space and hand over the keys.*"
- That following the complaint of one of the unions that did not have premises " *The Labor Inspectorate required the Catalan Institute of Health, Hospital (...) of (...), to allow shared use of a room between the USAE and CSIF unions from October 1 and to make available to each of the union sections a union premises for individual use from December 1.*"
- That " *All attempts to get CGT to release the space were unsuccessful and as they had been told on repeated occasions, on the morning of November 3, 2020 (...), they proceeded to remove what there was this annexe.*"
- That " *Mr. was asked (...) - the person making the complaint - repeatedly opened the door in order to be able to carry out the transfer, without success, and consequently the maintenance staff proceeded to open the door .*"
- That the person making the complaint was present " *while the space was being emptied* " and " *did not allow all the material to be left in the union office that CGT has right there .*"
- That in relation to " *the material that was being removed, it was decided to leave it in the hospital's belongings custody room, under lock and key, informing Mr.(...) .*"
- That in relation to the transfer " *The security staff guarded at all times the transfer carried out by the maintenance staff to the belongings custody room located on the third floor of the main building* ".
- That " *Half of the material was moved by directly moving the complete wardrobe without removing the things that were inside and the rest of the material that was on shelves, it was decided to disassemble them and move the material it contained using a cart. It is ensured that no one had access to the information contained in the transferred material at any time, nor to any personal data that the transferred documents may have. Therefore, there was no processing of the data contained in the transferred material. "*

- That the complainant *"although he was present at all times while the premises were being emptied, he did not want to accompany the maintenance and security staff to ensure that the material was left in an appropriate place. In fact, until today, all the material is still deposited in the room on the third floor, under strict security control until it is claimed ."*

The reported entity attached various documentation to the letter, including:

- copy of the different writings of the Director of Personnel of the Territorial Management from (...) to (...) of the trade union section of the CGT (dates 28/07/2020 and 13/10/2020), in the which he is asked to release " *the space that CGT uses as an archive " given that " it is not possible to further delay the works of the space intended for the new union representatives"* , and different alternative spaces are set out to establish the referenced archive.
- Copy of the letter of response from the CGT to (...), dated 30/07/2020, in which they show their disagreement with the room proposed as the new location of the archive.
- copy of the various minutes of the Personnel Board (from the period between June 2019 and November 2020), in which the person making the complaint is among the attendees, and among the points that have been debated, the relative in the spaces for the new unions.
- Two images from the day of the move, in one of them you can see a cupboard full of folders, and in the other, a shelf full of folders.

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 facts that are the subject of the present file resolution, and, in particular, if the way in which the file was transferred from the trade union section of the CGT of (...) in another room located within the entity, entailed a violation of the data protection regulations.

In this respect, as a premise it should be indicated that, from the statements of both parties, it is indicated that the transfer of the file took place in the context of a controversy between (...) and the union representative of the CGT, due to the fact that the latter objected to leaving the space occupied by its file free, as requested by (...) on several occasions before the date of the transfer. This is how things are, faced with the refusal of the trade union section of the CGT to move its archive, and after several warnings, the (...) proceeded to carry out the transfer with its own means.

In order to prove that the complainant was warned of the transfer, the (...) provides the various communications that he made to the CGT in this regard, the response that the CGT makes to these communications, as well as a copy of the minutes of the Staff meeting, where the complainant was present, and where the subject of the transfer had been discussed and a date had been established to execute it.

In this respect, it should be noted that the reason why the (...) required the CGT to vacate the room it had until then occupied as an archive, was because it was necessary to enable said room as an office for a third union which had won trade union representation in the last election. In this sense, the request would be justified based on article 8.2.c) of Organic Law 11/1985, of August 2, on Trade Union Freedom, which establishes that trade union sections that have obtained representation in the representative bodies, they have the right to have a suitable premises in order to carry out their functions. In this regard, it should be noted that neither the letter of complaint nor the letters that the trade union section of the CGT sends to the (...), at any time infers that the point of conflict centers on the cause that motivated the transfer of the archive (enabling a new office), but in the room that (...) would have proposed to them as a new location for the CGT archive, given that they considered it not suitable for their sizes - an end on which this Authority is not responsible for pronouncing -, as well as in the way in which the transfer of the file was finally carried out.

Having said that, regarding the way in which the transfer was carried out, according to the (...), the security staff guarded at all times the transfer carried out by the maintenance staff until its destination final, a room located on the third floor of the building, locked and under security control. Half of the material was moved by directly moving the complete wardrobe without removing the things inside and the rest of the material that was on shelves, was moved all together with the help of a cart. It is ensured that no one had access to the information contained in the transferred material at any time, nor to any personal data contained in the transferred documents. In this regard, it should be noted that in the statements of the person making the complaint, no specific fact was pointed out that could cast doubt on the fact that the transfer was carried out as set out in (...). So things are, from the description of the actions taken during the file change from one room to another, it is considered that the transfer of the documentation was carried out without putting at risk the protection of the personal data contained there, and that the security measures taken to do so were adequate to ensure its security and confidentiality. In this sense, no action is inferred that violated the regulations for the protection of personal data.

Finally, with regard to the last three requests presented by the complainant, it should be noted that, regarding the return of the documentation and having a space to file it, according to the statements of (...), the documentation as of today is filed under lock and key in a suitable place, which is the same room where it was transferred, the location of which the reporting person was informed, and is waiting to be claimed. With regard to the request to prevent events like what happened from happening again, just indicate that, from the point of view of data protection regulations, it is not considered that during the controversial transfer there was any violation of the data protection 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, 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 the dismissal proceeds: " a) *When the facts do not constitute an administrative infraction.*"

Therefore, I resolve:

1. Archive the previous information actions number IP 442/2021, relating to the Hospital (...) of the Catalan Institute of Health.
2. Notify this resolution to the Hospital (...) of the Catalan Institute of Health and communicate it to 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 denounced entity can file, with discretion, 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 reported entity can file any other appeal it deems appropriate to defend its interests.

The director,