

File identification

Archive resolution of the previous information no. IP 64/2022, referring to the College of Doctors of Barcelona

Background

1. 02/16/2022 , the Catalan Data Protection Authority received a letter from the complainant in which he filed a complaint against the College of Doctors of Barcelona (hereinafter, COMB), on the grounds of an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant (Mr. (...)) complained about the following: a) that the COMB would have allowed irregular access *by "experts"* to reserved information files no. IR-PM 089/18 and/or IR-PM 105/20 that the COMB had initiated following individual complaints that the complainant here had made before said corporation; and, b) that the COMB would have revealed to Dra. (...) "*responsible for (...)*", the name of the expert psychiatrists and psychologists who would have visited him. The person making the complaint stated that this information was contained in a document included in a CD that accompanied the letter he had submitted to the COMB on 12/18/2020 and that it extended a previous letter of 08/21/2020, in which he complained of the performance towards his person of Dra. (...).

The complainant, together with his letter, provided numerous documents, among others:

A) Copy of the IR-PM 105/20 file, which the COMB would have provided to the reporting person. This file includes, among other things, the following documentation:

- Letter of 21/08/2020 from Mr. (...) before the COMB complaining about the professional performance of Dra. (...).
- Copy of the two-page letter that on 12/18/2020 Mr. (...) presented to the COMB, expanding the complaint made against Dra. (...).
- Copy of the letter that the COMB addressed to (...) on 12/29/2020, in which it transferred the "*two letters presented by Mr. (...)*" complaining about his performance, so that he made the appropriate allegations. In this writing there is no mention of transferring any CDs.

B) copy of the document that, according to the person making the complaint, was included in the CD that accompanied the letter that he had presented to the COMB on 12/18/2020. On page 40 of this document, the names of certain professionals who would have visited it are listed.

2. Faced with the lack of concreteness of one of the facts reported (in particular the fact indicated in section a/ of the 1st precedent), on 02/17/2022 the complainant was requested to provide additional information, the which was necessary in order to initiate inspection actions. In particular, he was asked to identify the "experts" to whom the COMB would have allowed access to the files indicated, and the approximate date on which access would have taken place.

3. On 03/02/2022, the complainant responded to the previous request specifying the terms of his complaint. Thus, it identified the experts to whom the COMB would have improperly allowed access to the files reviewed, and the approximate dates on which these accesses would have occurred, with the following detail:

a) Access/communication to Ms. (...) who, according to the complainant, would be an "employee" of the COMB.

- in file no. IR-PM 089/18, on an undetermined date but in any case between 28/08/2018 and 13/12/2021.

- in file no. IP-PM 105/20, on an undetermined date but in any case between 12/18/2020 and 12/13/2021.

b) Access/communication to Mr. (...).

- in files no. IR-PM 089/18 and IR-PM 105/20, on an undetermined date but in any case between 12/18/2020 and 12/13/2021.

The complainant submitted numerous documents with this second letter.

4. The Authority opened a preliminary information phase (no. IP 64/2022), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for application 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.

5. In this information phase, through orders dated 03/04/2022 and 03/23/2022, the reported entity was required to report the following:

- In relation to the access reported by the experts Mrs. (...) and Mr. (...), in files IR-PM 089/18 and IR-PM 105/20 of the COMB, linked to the person reporting, reported on:
 - a) the specific dates on which the COMB would have provided the experts Ms. (...) and Mr. (...), this access.
 - b) In the event that these experts were employees of the COMB, report on the functions they perform in the institution and that they would have justified their access to each of the files mentioned. In the event that these people are outside the COMB, indicate the legal basis that would have enabled such communication.
- In relation to the access of Dr (...), responsible for (...), to the names of the experts who visited the complainant (information contained on page 40 of a document included in a CD which, according to the complainant, he presented to the COMB together with his letter of 12/18/2020):
 - a) confirm that the COMB provided the aforementioned doctor with this information. And, if confirmed:
 - b) report on the circumstances in which this communication would have occurred (its justification, the dates on which it occurred, what specific information was provided, etc.); and, the legal basis that would have enabled it.

6. On 03/22/2022 and 04/05/2022, the COMB responded to the aforementioned requirements, setting out the following:

- That *"the COMB has not provided or allowed access to the files to Ms. (...) and Mr. (...)".*
- That *"in the event that Mr. (...) have some type of medical assessment, opinion or expert report on their person issued by one of the indicated persons [Mr. (...) and Mr. (...)], I inform you that it was not motivated by the COMB (...)".*
- That *"the COMB has not facilitated Dr. (...) [doctor from (...)] the name of the experts who visited Mr. (...) that appear on page 40 (...)".*

7. On 03/23/2022 this Authority sent a letter to Mr. (...) in order for him to report whether the COMB had allowed him access to the disputed files.

On 04/13/2022 Mr. (...) responded to this request by informing that *"the COMB has not allowed me access nor has it communicated data relating to Mr. (...)n incorporated in the files processed by the COMB (...)".*

8. On 06/04/2022 this Authority sent a letter to Dra. (...) in order for him to report whether the COMB had allowed him access to the names of the experts who had visited him, information that appeared on page 40 of a letter of complaint that the complainant here had presented against the in person before the COMB on 12/18/2020.

On 22/04/2022 Dra. (...) responded to this request by informing that *"the COMB has not communicated any information regarding experts (...). The COMB asked me to respond to the accusations of Mr. (...) on my alleged professional malpractice to violate the code of ethics".*

9. On 29/04/2022 this Authority sent a letter to Dr. (...) in order for him to report whether the COMB had allowed him access to the disputed files.

On 13/05/2022 Dra. (...) responded to this request informing that the COMB *"has not allowed me access, nor communicated data relating to Mr. (...) and I don't know what the files IR-PM 089/18 and IR-PM 105/20 refer to".*

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.

As stated in the background, the complainant complained that the COMB, on the one hand, would have allowed two experts - Mr. (...) and Ms. (...) - the improper access to two files of reserved information initiated by said corporation following individual complaints it had made; and, on the other hand, that it would have facilitated Dra. (...) the identity of certain "experts" who had visited him, information that appeared in a document including a CD which, according to the complainant, accompanied the letter he had presented to the COMB on

18/12/2020, through which he expanded the letter of complaint against Mrs. (...) had formulated on 08/21/2020.

Well, within the framework of this prior information, and with regard to access to the disputed files by Ms. (...) and Mr. (...), both these professionals, as well as the reported entity, have denied that it happened.

On the other hand, and with regard to communication, by the COMB to Dra. (...), of the names of the experts who would have visited him - information that, as has been said, appeared in a document incorporated in a CD which, according to the complainant, he would have provided to the COMB together with his letter of 18 /12/2020; also in this case, both this professional and the COMB have denied this communication.

We are therefore faced with contradictory versions between the one provided, on the one hand, by the COMB and the aforementioned professionals, and, on the other hand, by the complainant. In this regard, it should be noted that, aside from the statements of the complainant here, there is no evidence available to corroborate the reported communications and/or improper access. And with regard specifically to the alleged disclosure of the names of the experts to Dra. (...) it must be said that, although it is true that the COMB addressed to the said professional on 29/12/2020 a letter giving her a transfer of the letters of complaint formulated by Mr. (...) had formulated against his person (letter A/ antecedent 1), it is also necessary to show that in this letter no mention was made of the transfer of any CD (which was where the document containing the controversial data relating to the experts who would have visited him), which would corroborate the statements made by this professional and the COMB in the sense of denying that such a revelation took place.

In view of all the above, the principle of presumption of innocence is applicable here as there is no evidence to prove any of the communications and improper access to data reported, and therefore, the commission of a infringement by the COMB. In this sense, article 53.2.b) of Law 39/2015, of October 2, 2015 (LPAC), recognizes the right "*To the presumption of non-existence of administrative responsibility until proven otherwise*".

3. In accordance with everything that has been set forth in the 2nd legal basis, and given that in the course of the actions carried out in the framework of the prior information, it has not been accredited, in relation to the facts that have addressed in this resolution, any fact that could be constitutive of any of the violations 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: "*b) When the facts are not accredited*".

Therefore, I resolve:

- 1.** File the previous information actions number IP 64/2022, relating to the College of Doctors of Barcelona
- 2.** Notify this resolution to the College of Doctors of Barcelona and 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 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.

The director,

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