

## File identification

Archive resolution of the previous information no. IP 178/2022, referring to Sant Joan de Déu Health Park ( Mental Health Center for Adults in Castelldefels).

## Background

1. On 05/10/2022, the Catalan Data Protection Authority received a complaint against the Catalan Health Service (CatSalut), on the grounds of an alleged breach of the regulations on personal data protection .

In particular, the complainant stated that CatSalut sent an SMS and called a phone number that was not his, which led to the disclosure of information about his health to a third person, without his authorization.

Along with the complaint, he provided a copy of the letter of complaint he had submitted to CatSalut on 03/03/2022 (with entry settlement no. (...)). In this letter, he stated the following:

" During the month of February 2022, the notification system sent an SMS to my father's mobile phone, an SMS that should have been sent to me, since it contained health information about me. I went to complain to Sant Camil hospital in Sant Pere de Ribes, which was the site that appeared in that message, but they dismissed my claim.

Shortly afterwards, on February 22, one day after visiting me with the GP at the Castelldefels outpatient clinic, the same system dependent on CatSalut makes a phone call to my father's same mobile phone, to communicate an in-person appointment with me person in the CSM of Castelldefels for February 28. My father identified himself as such in the conversation held, he never impersonated my identity, and yet they gave him my personal and medical information."

The complainant also provided copies of several emails exchanged with CatSalut following his complaint. Among these, it is worth highlighting the one sent by the complainant on 10/03/2022, in which he answered the question that this entity had asked him about what was the telephone number to which the communications that were the subject of his complaint would have been addressed ( phone call and SMS):

" **They went to the telephone number 671 (...)**, [the remark is from the Authority] that it is my father's number, not mine. And they did it up to 2 times. The fact that I change the telephone number that appears on my file, and you do not have the new telephone number, until I notify you, does not give you the right to send my communications to a third party, even if I am related . It is a serious violation of the law. And the administration is the first that must comply with the law, and ignorance of it does not exempt it from compliance."

2. The Authority opened a preliminary information phase (no. IP 178/2022), 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 (LPAC), to determine the entity or entities responsible and whether the facts were capable of motivating the initiation of a sanctioning procedure.

3. On 05/27/2022, CatSalut, as responsible for processing the central register of insured persons (RCA), was required to indicate which contact telephone number of the reporting person was registered in this database, during the period of time in which the reported events took place (from 1/02/2022 to 22/02/2022).
4. On 12/09/2022, CatSalut responded to the aforementioned request through a letter in which it explained that in the RCA, during the period of time between 1/02/2022 and 22/02/ 2022, the following contact telephone numbers were linked to the complainant: **604(...)** and **938(...)**.

Likewise, in relation to the complaint submitted by the complainant to CatSalut, he provided the response that was given to him on 05/26/2022, literally:

"Sir (...),  
In relation to your letter addressed through the Citizen Service Mailbox registered with registration number (...).  
We must inform you that the contact details listed in the Central Register of Insureds are the ones you have provided us. We have contacted your Primary Care Team and your referring Hospital in order for them to check that the contact database corresponds to the information you have given us and as you have informed us the data is correct. For your knowledge, we inform you that the data relating to the telephone number and email address can be updated through My Health."

5. On 09/14/2022, also during this preliminary information phase, the Authority's Inspection Area addressed a new request to CatSalut, in order to have more information to clarify the circumstances of the events reported. Specifically, he was asked to report on the following points:
  - If between 1/02/2022 and 22/02/2022 you sent an SMS to the phone number '671 (...)' to inform the reporting person about a medical matter.
  - To confirm that the reporting person had a scheduled medical appointment at the Castelldefels Adult Mental Health Center (CSMA) for 02/28/2022 and, if so, to indicate how they informed him of this appointment.
6. On 10/25/2022 , the Authority sent a letter to the reporting person, in order to provide additional information to clarify certain aspects related to the facts reported. Of the notifications made to the complainant through various means, those sent by electronic means were rejected and those sent by certified mail were unsuccessful.
7. On 23/11/2022 , given that the deadline had been exceeded without CatSalut responding to the request of 14/09/2022, this Authority reiterated the request that it respond within 5 days , with the warning that if he did not comply, he could be in breach of data protection regulations.

- 8.** On 29/11/2022, CatSalut responded to the request by means of a letter in which it stated the following:
- That it does not have direct communications with patients for healthcare reasons and that, for this reason, they did not have any contact with the person making the complaint.
  - That he does not have direct access to the activity agendas of the supplier entities, so he could not confirm whether the person making the complaint had an appointment scheduled for 02/28/2022.
  - That he is not aware of the mechanism used by the provider entity to inform about the schedule of visits.
- 9.** In relation to the fact reported linked to the telephone call to a telephone number unrelated to the person making the complaint ('671 (...)', in view of CatSalut's response and that the person making the complaint had stated that this call was related to the scheduling of an in-person appointment on 02/28/2022 at the CSMA, on 12/18/2022 this Authority requested the Sant Joan de Déu Health Park (PSSJD), on which the CSMA depends, to answer the following questions:
- If the reporting person was a user of the CSMA and, in this case, reported on whether the service was provided in the framework of the public provision of health services.
  - If you were provided with public healthcare, answer the following questions:
    - If you had a medical appointment scheduled on 02/28/2022 at the CSMA.
    - If, between 1/02/2022 and 22/02/2022, a call was made to the telephone number '671(...)', with the aim of informing the complainant of the aforementioned appointment and / or about other information related to your health.
  - In the event that the disputed call was made, answer the following points:
    - The origin of the telephone number that would have been called -671 (...)- (how it was obtained, if the reporting person provided it, on what date and circumstances, etc.).
    - The circumstances of the call (if the person who made the call made sure who the caller was and how, what information was provided, etc.).
    - If you have a protocol or other document detailing the telephone service for users, a copy should be provided.
- 10.** On 12/22/2022, the PSSJD responded to the request through a letter in which it stated the following:
- That " the complainant is not currently a user of the Castelldefels CSMA managed by the Sant Joan de Déu Health Park. It is true, however, that he was cited on February

22 for a visit that had to take place on 02/28/2022 at 11 a.m. and to which he did not appear, as part of the public provision of health services .”

That "actually on 02/22/2022 at 1:38 p.m. we have a call from the summons administration of the CSMA of Castelldefels to the mobile number that is the subject of the controversy: 671(...)."

- That "on 02/22/2022 at 12:47 p.m., the CSMA received a referral from the patient's primary care physician in which she requested an urgent visit to the CSMA since this is a patient with a serious disorder that could be decompensated for having a partially expired medication prescription."
- That "the visit was scheduled in the first free slot, on 02/28/2022 at 11:00 a.m. with a professional from the center and the administration is trying to contact the patient to inform him of the day and time of the visit . Neither of the two telephone numbers listed in the referral are operational and a message appears that they do not exist."
- That "given the urgency of the summons, the administration assesses that sending a letter to the patient is not a viable option and checks that in the observations of the patient's contact persons, the mother's details are recorded with the mobile number 671( ..)."
- That on the same day 02/22/2022, at 1:38 p.m., the administrator called the aforementioned phone number and asked about the patient's mother and if there was a way to contact her son. That, at no time, she identified herself as a CSMA or PSSJD worker. That the mother replied that her son was with her at the time and handed her the phone. That "the administration requests that Mr. (...) is identified with a positive result and is given the information on the urgent referral flyer sent by his general practitioner, the next visit and the address of the center where he should go. It does not specify that it is a mental health center or the service that will visit it."
- That on the same afternoon of 02/22/2022, the complainant contacted the CSMA, to warn that he would not attend the visit and that "a phone that is not his was called and he already commented on the his intention to report the fact."
- That on 02/23/2022 the doctor with whom she had arranged the visit of 02/28/2022 contacted the patient, on the phone from which he had made the last call the previous afternoon, in order to try not to disengage from the visit, given the urgency of the referral from the primary school doctor. That the reporting person stated that he would not go to the visit and that he would change centers, given that a contact phone number that was not his had been used. That "It is also recorded that the gentleman was aware that neither of the two telephones listed in the referral were correct and he did not give another number to locate him."
- That the administrator who made the call to the complainant had passed the data protection training.

Along with the allegations presented, the entity provided a document entitled "Telephone Support Procedure", dated February 2021.

11. In view of the information provided, on 02/27/2023, a new request was addressed to the PSSJD to inform on whether the entity had access to the RCA and, if so, state the reason why this record was not consulted, before using the telephone numbers of the patient's contact persons (in this case, his mother's).

In addition, the question made in the first request, which had not been answered, was reiterated, referring to the origin of the telephone number to which the administrative person had called ('671 (...)') and that, as stated in the response to the previous request, was listed in the patient's file as belonging to the contact person (his mother).

12. On 03/03/2023, the PSSJD responded to the request in a letter stating the following:

- That "we confirm that we have access to the RCA and that our computer program is updated with the patient data such as the ABS to which they belong and the contact telephone". That the administration of the Castelldefels CSMA confirms that, upon verifying that the two telephones listed on the diversion sheet "were not operational", it consulted the RCA "where, at that time, the two numbers in question were registered."
- That "in relation to how we accessed the controversial telephone number [671(...)], in our patient register you will see that the patient's mother's medical history number is listed as a contact person. This field is filled in if the patient himself wants to add a contact person when registering his medical history. The administration accessed the record of the person in question in order to be able to access the mobile phone and get in touch with the user who needed an appointment imminently." To prove this, the image capture of the register where the complainant's mother is listed as a contact person is attached.

13. On the basis of the antecedents that have been related and the result of the investigation actions carried out in the framework of the previous information, on today's date the present file resolution is issued in relation to the related conduct to a phone call made to a phone number other than the reporting person (671...).

With respect to the fact reported linked to the sending of an SMS to the aforementioned telephone, on today's date an agreement is also issued to initiate disciplinary proceedings against the Consorci Sanitari de l'Alt Penedès i Garraf (entity to which it depends Hospital Residencia Sant Camil).

### **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 complained that, on 02/22/2022, CatSalut had made a call to a telephone number that was not his/her own ('671 (...)') and that this caused provided their health data - specifically, that they had an appointment on 28/02/2022 at the CSMA (center dependent on the PSSJD) - to a third person, without their authorization. This third person, according to the reporting person, was his father (antecedent 1).

As part of the investigations carried out by this Authority, it has been established that the controversial call to telephone number 671(...) was not made by CatSalut, as claimed by the complainant, but by the CSMA, a center that depends on the PSSJD. In the previous information, the PSSJD has admitted that it called this telephone number in order to try to locate the complainant, but denies that in the framework of this call any health information about the complainant was facilitated to a third party person. The PSSJD justifies the use of this telephone number due to the need to contact the complainant urgently. The CSMA stated that the referral of the complainant's case had been made by the primary school doctor, who requested an urgent visit.

The administrative person in charge of the citations tried to contact the patient, through the two telephones listed in the referral -which would match the ones listed in the RCA-, but they were not operational ("a message appears that they do not exist ", antecedent 10th), and that due to the urgency of the case he called the telephone number 671 (...) which appeared in the center's records as belonging to the patient's contact person (his mother), given that the PSSJD claims that it could only have been informed by the same patient and complainant. In view of the above, there is no element to infer that the PSSJD had any inaccurate information relating to the complainant in its records. With regard to the use of the controversial telephone number, and given the circumstances reported by the PSSJD, it is fully justified and in accordance with the data protection regulations (art. 6.1. e of Regulation 2016/679 of the European Parliament and of the Council , dated 27 April 2016), bearing in mind that this would have been the last resort after trying to contact them through other telephone numbers (those listed on the referral sheet and the RCA).

Regarding the complainant's complaint that his personal medical information was provided to a third party through this call, it should be noted that, as has been advanced, the PSSJD has denied that this occurred. According to this entity, the administrator who called the telephone number cited did not give any medical information about the patient to the person who answered the call, and only asked if she was the mother of the complainant and if she had way of contacting her son ("at no time does she identify herself as an administrator of the CSMA de Castelldefels or of the Health Park. The mother replies that (...) she is at home at the time and hands him the phone", background 10th. And that, then, the administration made sure that the interlocutor was correctly identified (the complainant) and "he was given the information from the urgent referral flyer sent by his general practitioner, the next visit and the address of the center where he must go." In short, the PSSD states that at no time was it revealed to the mother of the complainant that she was being called from a mental health center, nor was the service that would visit her.

On the other hand, this Authority tried, without success, to contact the reporting person several times in order for him to provide some element to prove the disclosure of reported information.

For all this, we would be faced with two contradictory versions: on the one hand, that of the complainant, in his complaint that he complained about this revelation; and that of the PSSJD, which denies it. Faced with this, the principle of presumption of innocence is applicable here, since there is no evidence to prove the reported disclosure and, therefore, that the PSSJD has committed an offence. In this sense, article 53.2. *b* of the 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 out in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information, in relation to the facts that have been addressed in this resolution, no 'has proven any fact that could be constitutive of any of the violations provided for in the legislation on data protection, it is necessary to agree on the 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 liability. This resolution will be notified to the interested parties." And article 20.1 of the same Decree determines that dismissal is appropriate: "a) When the facts do not constitute an administrative infraction; b) When there are no rational indications that the facts that have been the cause of the initiation of the procedure have occurred."

## **resolution**

Therefore, I resolve:

1. File the previous information actions number IP 178/2022, regarding the Sant Joan de Déu Health Park.
2. Notify this resolution to the Sant Joan de Déu Health Park 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.

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