File identification

Archive resolution of the previous information no. IP 189/2022, referring to the Pere Mata Institute.

Background

1. On 05/19/2022, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the Pere Mata Institute - which manages the Child and Youth Mental Health Center of Tarragona (hereafter CSMIJ)-, due to an alleged breach of the regulations on the protection of personal data . Specifically, the complainant complained that in a report issued by the CSMIJ in relation to his minor son, information was included that *"violates the privacy of the family"* : The complainant did not provide any other information or documentation.

2. On 05/20/2022, following the request for additional information from this Authority, the complainant provided various documentation to substantiate his complaint, specifically.

a) Discharge report issued by clinical psychologist Ms. (...) of the CSMIJ on 12/05/2019, in relation to the minor child of the complainant, which includes the following information *"contains records of follow-up from CSMA by the mother and family records of serious mental disorder"* (paragraph highlighted by the complainant herself).

b) Copy of a letter of complaint that the mother of the complainant here (grandmother of the minor) would have sent on 25/01/2022 to the Directorate of the CSMIJ, for the inclusion in the discharge report of the minor of the information regarding the follow-up of the complainant in an Adult Mental Health Center (CSMA) and the existence of a family history of mental disorder. In this letter it was stated *that " The fact that the mother is in the Specialized Intervention Service (SIE), which for your information, is for ABUSED WOMEN, and that the fact that the mother herself asked for psychological help to overcome the years of abuse from the bad coexistence, did not entail in any way, that it was recorded in a report of the minor (...) . It is not justified in any way, that in the report of a minor under (...) years old, to say whether or not he suffers aggression from the father, it must be stated that the mother (abused woman) is or not receiving psychological help to overcome it, and much less, if there is a family member who suffered from an illness. By the way, I assume that this is a (...) (uncle-grandfather of the minor) who died 25 years ago, who due to an overdose of drugs, developed schizophrenia. Therefore, it is neither hereditary, as this report wants to show, nor is there a family history, and much less of a mother who has suffered gender violence".* In this same letter of complaint it was added that the collection of this information in the report could harm the complainant here in the family process started for the custody of the minor.

3. The Authority opened a preliminary information phase (no. IP 189/2022), 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 (henceforth, LPAC), to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure.

4. In this information phase, on 05/27/2022 the reported entity was required to justify the need to include in the minor's report of 12/05/2019, the controversial information (following the mother of the minor in the CSMA and the existence of a family history of serious mental disorders).

5. On 06/23/2022, the Pere Mata Institute responded to the aforementioned request through a letter from its data protection officer (DPD), in which he stated the following:

- That on 30/05/2019 Ms. (...) (who signs the report containing the controversial information) visits the minor accompanied by his mother (here the complainant). That in this visit a comprehensive examination of the minor is carried out. That " *when the mother is asked about the family history, the mother informs about the extremes that are collected in the discharge report, and that they reproduce those that are collected in the user's clinical information".*
- That " *this information provided by the minor's mother, and which is part of the relevant information that according to medical practice must be obtained in order to initiate a diagnostic procedure and subsequent treatment, must be included in the medical history and user's discharge report, so that in order to be able to effectively carry out a correct follow-up by all the professionals who may care for the minor afterwards, or throughout the minor's life, the family history must be recorded in the patient's clinical information. This circumstance facilitates what we call the care continuum (...)"* .
- That *"the inclusion of this specific data in the medical records of the minor* (name of the minor) *is essential from a medical point of view and of medical practice, and has the purpose of protecting the health of the minor* (name of the minor) minor) *given that all the professionals who treat* (name of the minor) *and the doctor who monitors him take into account the existence of these antecedents. There is no doubt that the inclusion of these antecedents from a medical point of view is essential, correct and necessary".*
- That *"another thing is that in accordance with the provisions of the Data Protection Law, this particular end of the History is wanted to be cancelled, a fact that is not requested in the letter of claim, and that in the in the event that it is requested, this request would be processed after making the corresponding assessment on its provenance in accordance with current law".*

6. On 07/07/2022, also during this preliminary information phase, the Institute, following a previous request from this Authority of 06/23/2022, provided a report issued on 07/07/ 2022 by the clinical psychologist who signed the controversial report, in which the content of the letter that the DPD of the Pere Mata Institute had addressed to the Authority was fully ratified. He added that omitting the controversial information from the discharge report *"will omit an important part of the information that may be required by any other professional to address the treatment of minors (...) Depriving other professionals of this information could be considered malpractice and would also mean depriving the minor of his right to health and to receive appropriate treatment (...).”*

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 has been advanced, the reason for the complaint is the inclusion in the discharge report of the complainant's youngest child, issued by a clinical psychologist from the CSMIJ, of the following information: "there is a history of follow-up from the CSMA *by of the mother and family history of serious mental disorder"* . The complainant considers that from this literal it is inferred that there is a serious and hereditary history of mental illness in the family, when the reality is that the attention given to the complainant in the CSMA has its origin in having been a victim of male violence and that the schizophrenia suffered by the minor's uncle-uncle (which he assumes is the one referred to when the report alludes to family history) had been a consequence of his addiction to narcotic substances. And he adds that the inclusion of this information in the report could lead to serious prejudice in the judicial process for the custody of his minor son.

In view of the above, it should be noted that the complainant does not question the information included in the report (that she has been a user of a CSMA, nor that a family member has suffered from a mental illness); rather, the reason for the complaint focuses on the inclusion of this information in the report when the family history of mental health is what has been indicated, and the interpretation that can be made of it.

Taking into account the above, it is first necessary to analyze whether, in the abstract, the information relating to family history is information capable of being incorporated in the discharge reports of a health care process.

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.*
> *(...)"*

For its part, Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), provides in its article 9, regarding the treatment of special categories of data, the Next:

> *" 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 rank 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".*

To the extent that the disputed information is information collected in clinical documentation, it is necessary to refer to the health legislation applicable to the case.

Law 41/2002, of November 14, basic regulation of patient autonomy and rights and obligations regarding information and clinical documentation, provides the following:

Article 3 defines the clinical history as " *the set of documents that contain the data, assessments and information of any kind on the situation and the clinical evolution of a patient throughout the care process"* ; and, the medical discharge report as *"the document issued by the responsible physician in a health center at the end of each patient care process, which specifies the data, a summary of their clinical history, the care activity provided , diagnosis and therapeutic recommendations"* .

The unique transitory provision of this same rule provides that *"the discharge report is governed by the provisions of the Order of the Ministry of Health of September 6, 1984, as long as the provisions of article 20 d are not legally deployed "this Law".*

The Order of September 6, 1984, which regulates the obligation of the discharge report, to which the additional provision transcribed above is referred to, is still in force, determines in its article 3 that the report of 'alta must include, among others, *"e) Summary of the patient's clinical history and physical examination".*

For its part, Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, defines in its article 9 the clinical history as " the *set of documents relating to the healthcare process of each patient while identifying the doctors and other healthcare professionals who intervened. The maximum possible integration of each patient's clinical documentation must be sought. This integration must be done, at least, in the scope of each center, where there must be a unique clinical history for each patient".* And article 10 of this same rule expressly establishes that *"familial and personal physiological and pathological history"* are part of the content of the clinical history.

So, if on the one hand, the discharge report must include a summary of the patient's clinical history; and on the other hand, the medical history must contain the physiological and pathological family antecedents, it is clear that the incorporation of this last information in the said discharge report is foreseen by the health regulations, as long as and when, needless to say- ho, the healthcare professional considers that such information is relevant for the purposes of the patient's medical treatment.

In short, in accordance with the regulations transcribed, and from the perspective of the right to data protection, the collection of information relating to relevant family history in a patient's discharge report would be enabled by the article 6.1.e) and 9.2.h) of the RGPD.

Having said that, it is necessary to analyze whether, in the specific case that concerns us here, the inclusion of the controversial information in the minor's discharge report by the CSMIJ, would contravene the principle of minimization contained in article 5.1.c) of the RGPD, according to which the personal data subject to treatment must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated.

In this regard, it should be pointed out that both the DPD of the Pere Mata Institute, as well as the same professional who issued the discharge report for the complainant's minor son, have justified in detail the reasons that, since from a legal and medical point of view, they justified the inclusion of information relating to family history in the minor's discharge report. And it must be said that this Authority does not have any element that allows the professional judgment of the clinical psychologist to be distorted, which considered the incorporation of this information pertinent and justified in the interest of the minor, which prevents the accused entity from being charged with a violation of the data minimization principle. On the other hand, regarding the eventual interpretation by third parties of the information included in the report (such as, according to the complainant, that the mental illness would be hereditary), it is something that exceeds the competence of this Authority .

Without prejudice to what has been explained, which entails the archiving of the present actions, nothing prevents the person making the complaint - as a representative of the minor - from exercising the right of deletion before the entity, so that it is deleted the disputed information from the child's medical history and/or discharge report; or the right to rectification in order to complete the data incorporated there (in the sense of identifying the origin of the care provided in CSM to the minor's relatives, as long as this end is duly

substantiated). The reporting person could also exercise, on their own behalf, the right of deletion or rectification, in relation to their own data.

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 dismissal proceeds " *a) When the facts do not constitute an administrative infraction".*

Therefore, I resolve:

1. Archive the actions of prior information number IP 189/2022, relating to the Pere Mata Institute.

2. Notify this resolution to the Pere Mata Institute 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 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,