

File identification

Archive resolution of previous information no. IP 213/2022, referring to the Girona Clinic.

Background

1. On 03/06/2022, the Catalan Data Protection Authority received a letter from a person (...) in which he filed a complaint against Clínica Girona, on the grounds of an alleged breach of the regulations on personal data protection .

In his letter, the complainant stated the following:

— That, through the La Meva Salut (LMS) application, "she was able to warn that on March 2, 2022, her medical history had been accessed from the Girona Clinic without her having had any visits on that date this contracted center nor any of the health professionals assigned to public health were working there that day."

— That, for this reason, "he understands that there has been unauthorized access to his medical history."

— That "he brought this fact to the attention of the Catalan Health Service [CatSalut] who responded through the attached communication contradicting what appeared in the medical history and telling him that this access had not occurred ."

— That, in the certificate sent by CatSalut, "it can be noted that the access that occurred on March 2 [of 2022], although it is said that it was made from the Hospital Dr. Trueta de Girona" in "the health center code is listed as H17001491. If we observe in the same certificate, the Hospital Dr. Trueta that appears at other times in the grid has a different health center code, H17001484; and a quick search on the Internet shows that the health center code H17001491 corresponds to Clínica Girona."

The reporting person provided, among other things, the following documentation relating to the events reported:

— Screen print, taken from LMS, in which it appears an access made from the Girona Clinic on 02/03/2022 at 09:49 hours.

— Letter that CatSalut sent to the complainant, dated 08/05/2022, in which he responded to his request for traceability to HC3, the database whose data controller is Department of Health. [It should be noted that through Resolution SLT/2376/2015, of September 17, the Department of Health delegated to CatSalut the consideration, management and attention of requests to exercise access rights , rectification, cancellation and opposition by citizens in relation to the data contained in the HC3].

This letter includes a list of accesses to the HC3 of the reporting person from 05/28/2020 to 04/05/2022. There is an access on 03/02/2022 (the one that is the subject of the complaint), with the following details:

citizen	Date of access	Health Center	Health Center	Information consulted
---------	----------------	---------------	---------------	-----------------------

[no. HC of the reporting person]	2/3/2022 9:49	H17001491	Trueta Hospital	Clinical course information
----------------------------------	---------------	-----------	-----------------	-----------------------------

In the same list, there is an access made from the "Hospital Trueta" which, unlike the access that has been transcribed, is associated with the no. of the following health center: H17001484.

2. The Authority opened a preliminary information phase (no. IP 213/2022), 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.

3. In this information phase, on 08/25/2022 the reported entity was required to provide the record of access to the clinical history (HC) of the reporting person referred to on 03/02/2022, in which contained the information or records consulted, and reported the person who would have made the controversial access to the HC, indicating their professional category and the reason that would justify said access.

4. On 09/07/2022, the reported entity responded to the aforementioned request through a letter in which it stated the following:

— That "The person who made the access is the (...) from Clínica Girona, Dra. (...), to consult data to carry out some administrative procedures, since the complainant (...) had previously been treated at Clínica Girona."

The reported entity attached to the letter the access register that had been requested, which shows an access on 03/02/2022 to the modules "vh_as_annotaciones" and "vh_vhe_datos"

5. On 09/19/2022, the reported entity was again required to indicate in detail the following:

— The administrative procedures carried out by the (...) of the reported entity and the need to access the complainant's HC on 03/02/2022 in order to carry them out.

— On what dates and circumstances was the complainant previously treated at the Girona Clinic.

6. On 09/22/2022, the reported entity responded to this second request through a letter in which it stated the following:

— That "The administrative procedures carried out by the (...) of Clínica Girona were a review and update of the coding data by the CMBD [Minimum Basic Data Set] of various Clinical Histories, corresponding to the years 2020 and 2021, and among them that of the [complaining person], who had undergone surgical intervention at the Clinic, derived from the Trueta, in that reviewed period."

— That the complainant was treated at the Girona Clinic on three occasions, two in 2016 and the most recent on 02/24/2020 for "hospital admission (...), derived from the Josep Trueta Hospital , through the public concert."

7. On 09/28/2022 and still within the framework of this preliminary information phase, the Authority asked the reporting person to confirm or deny the information provided by the reported entity regarding the fact that would have been attended to in said clinic on 02/24/2020. He was also informed that the reported entity had brought to the attention of the Authority that the (...) of the clinic had accessed, for CMBD coding purposes, several clinical histories in relation to assistance carried out in the years 2020-2021, including yours.

8. On 09/29/2022, the complainant responded to the previous request through a letter in which he set out, in summary, the following:

— That it is true that on 02/24/2020 he entered the Girona Clinic, "derived from the Josep Trueta Hospital, through the public concert."

— That, he is "(...) from Girona City Council" and that, on 02/03/2022, when access to his clinical history took place, "he was on sick leave."

— That the job he holds at the Girona City Council (...) who is at the same time (...) from the Girona Clinic."

— That "The facts that have been exposed show that the access made by Ms. (...) on March 2, 2022 in the clinical history of [the person making the complaint] was totally inappropriate and contrary to the regulations on the protection of personal data since it can be deduced that the information to which it goes being able to have access was not carried out 'for the purposes of codification of various clinical histories corresponding to the years 2020-2021' (...) but could have been motivated by his status as (...) of the City Council of Girona that boasts."

— That "at no time is it justified that (...) the said health center regularly performs coding tasks and that this task belongs to it" and that, "(...) from what is stated in the access carried out to the have access based on the certificate issued by the Catalan Health Service (...), at no time is it provided that the access was for coding reasons but that the information consulted was the clinical course."

— That "the certificate from the Catalan Health Service (...) states that the improper access in question was carried out from the Hospital Dr. Trout de Girona. However, the health center code includes the code H17001491 which corresponds to Clínica Girona. Whoever subscribes understands that what has been exposed denotes yet another irregularity in the improper access he has suffered (...)."

9. On 02/11/2029, also within the framework of this prior information, the Authority required the Department of Health to comply with the following:

— That it provides the record of access to the HC3 of the reporting person referred to on 02/03/2022, which includes the time of access, the information or records consulted, the identification of the person who goes there access and from which health center.

— That you indicate why LMS states that access to the HC3 dated 02/03/2022 was made from Clínica Girona and the document issued by CatSalut states Josep Trueta Hospital.

— To indicate what would be required for the Josep Trueta Hospital to be linked to the center code corresponding to the reported entity in the document issued by CatSalut (detailed in the preceding 1st in fine).

10. On 11/30/2022, the Department of Health responded to the previous request through a letter in which it stated the following:

— That provided the log of accesses to the HC3 of the reporting person referred to on 03/02/2022.

In the record provided, the same information transcribed in the antecedent 1st in fine is shown. And it is added that this access was made by the "Professional" "(...)"

— That "The access register includes the center code but the name of the center to which this code corresponds is entered manually. In the present case, an error occurred when manually entering the name of the center to which the code corresponded and it was associated with the Josep Trueta Hospital when it corresponded to the Girona Clinic."

— That "this is a material error in the inclusion of the center associated with the code, so the code is correct and the center to which it corresponds is Clínica Girona and not Josep Trueta Hospital."

11. On 02/12/2022, the Authority again requested the Department of Health to provide an extract from the log of access to the HC3 of the reporting person on 02/03/2022, as it appears in the computer record.

12. On 14/12/2022 the Department of Health responded to this last request, providing the record that had been required, which contained the following:

citizen	Date of access	Health Center	professional	User Code	Information consulted
[no. HC of the reporting person]	2/3/2022 9:49	H17001491	(...)	(...)	Clinical course information

13. On 12/20/2022, the Authority requested additional information from the reported entity in order to:

— Provide the description, on the date of the facts, of the workplace of (...) at Clínica Girona, indicating in detail his functions, and specifying which of them would be linked to the work that Dr. (...) on the day of the controversial "review and update of coding data by the CMBD" access.

— Justify that this coding work inevitably entails access to the patients' HC3, and specifically to the HC3 module "clinical course information."

— Provide the log of accesses made that day by Dra. (...) in the HC3 file indicating for each access the date and time, CIP or other identifier, and the module or information that was consulted.

14. On 02/01/2023, the data protection officer of the reported entity responded to the previous request through a letter in which he stated the following:

— That, "According to the document 'Capacity functions and Attributions of care and support staff' approved by the center's Management Committee and by the Health department's accreditation system; the functions of the (...) are the following:

- It depends hierarchically and functionally on Management
- It is (...) responsible for clinical assistance and on which the following Services and Units depend:
 - Medicine and its specialties
 - Surgery and its specialties
 - Gynecology and obstetrics
 - Pediatrics
 - Central Services (including Pharmacy)
 - Documentation and Archive
 - Teaching and research
 - Emergencies
 - Operating room
- Direct, coordinate and evaluate the care activities of the Clinic.
- Compile the care activity report.
- Responsible to CatSalut for referrals, waiting lists.
- Responsible before CatSalut for the maintenance of CMBD data, HC3 and other registers where it is considered necessary to collaborate.
- Carry out the monitoring of the activities of the various Services and Units that depend on them, evaluate the level of quality, propose the appropriate measures and monitor the improvement actions.
- Promote and supervise the drafting, dissemination and compliance of Work Procedures and Treatment protocols, in your area.
- Responsible for the prevention and control of Hospital Infection.
- Establish the relevant guidelines and coordinate the management of the assistance resources attached to the services and units that depend on them.
- Staff selection, supervise and control time tables and coordinate with HR the labor aspects included in the current agreement of the staff in their charge.
- Promote and supervise the teaching and research activities of the Clinic's care staff.
- Coordinate with different schools the training practices of students in their area of influence.
- Coordinate the different Assistance Commissions
- Identify the training needs of the services and units that depend on them and promote them through the Training Commission.
- Responsible for clinical documentation.
- Undertake those tasks that, depending on the nature of your position, may be delegated by the Management.
- Determine, modify, expand, reduce or suspend the attributions, capacities and competencies of the professionals who depend hierarchically according to the current organization chart. "

— That "Within the tasks related to the CMBD entails:

- Sending the data periodically
- Annual closing of the CMBD
- Correction of detected errors, whether administrative or healthcare in nature, which often entails the need to consult data from the HC or HC3.
- When the errors are in reference to main, secondary diagnoses or the patient's pathological history, it is necessary to monitor the clinical course of the same in order to be able to detect and code them."

— That " The objective of maintaining the CMBD's declaration correctly is key so that the Department of Health assesses the degree of care complexity of each Center and assigns the rates to be applied in relation to each type of activity carried out."

— That attached the "list of accesses made by Dr. (...)during the month of March 2022 in the HC3 of different patients in order to update data in reference to the CMBD" and that "our computer system does not allow to differentiate which specific sections of the HC3 are accessed in each case."

It is noted that the list contains several accesses (twenty) made to the HC3 of sixteen patients - among them to the HC3 of the person making the complaint -, all of them made between 1/03/2022 and 31/ 03/2022.

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 facts reported that are the subject of the present filing resolution.

The complainant complained of improper access to his HC3 on 03/02/2022 from the Girona Clinic, which he found out through the LMS application. It also showed that CatSalut, in response to its request for information in relation to this access, would have answered it incorrectly, since in the list that had been provided to it, the center code from which it was linked was linked had carried out the controversial access - which corresponded to the Girona Clinic - with the University Hospital Dr. Josep Trueta It should also be mentioned that during this phase of prior information the complainant made it clear that when his data was accessed he was on sick leave and that his workplace depended on (.. .) Girona City Council, which was managed (on the date of the events) by the person who had accessed its HC3, at the same time (...) of the reported entity.

The controversial access, according to the information provided by the reported entity, was carried out (...) by Clínica Girona to consult clinical data as part of a review and update of the coding data by the Minimum Set of Basic Data (CMBD) of several clinical histories corresponding to the years 2020 and 2021, among which was that of the person reporting. Likewise, the claimed entity informed, among other aspects, that within the various functions (...) there is the responsibility before CatSalut for the maintenance of the data of the CMBD,

HC3 and other records and that the tasks related to the CMBDs often involve the need to consult HC or HC3 data. Also, the reported entity certified that, during the month of March 2022, (...) made a total of twenty accesses to the HC3 of different patients (sixteen) of this medical center, from which it can be infer that accessing the patients' HC3 is not an unusual action, but would fall within the ordinary exercise of their duties.

On the other hand, the Department of Health was required to explain the reason why it appeared in LMS that the access had originated at Clínica Girona and in CatSalut's response, on the other hand, it was indicated that it had occurred at University Hospital Dr. Josep Trueta, adequately justified that it was a one-off error caused by the fact that the name of the center was manually incorporated into the response addressed to the person making the complaint, and that, indeed, access to the HC3 of the person making the complaint 'had been carried out by Clínica Girona, as indicated by the code assigned to this medical centre.

Well, aside from the complainant's statements, which are within the scope of his suspicions, there is no other element that allows him to maintain that the access to his HC3, on 02/02/2022, it was improper access. On the contrary, as has been advanced, Clínica Girona has explained in a reasoned way that the controversial access was carried out within the framework of the tasks assigned to (...) of the medical center, in relation to the coding of the CMBD.

It must be taken into account that the sanctioning procedure is particularly guaranteeing because of the consequences that can be derived from it. That is why there must be enough evidentiary elements or rational indications to impute the commission of an offence. In line with article 24 of the Spanish Constitution, regarding the presumption of innocence, article 53.2. b of the LPAC includes the following as the right of those presumed responsible for administrative procedures of a punitive nature: "The presumption of non-existence of administrative responsibility until the contrary is proven."

It cannot be ignored that the penal administrative law applies, with some nuance but without exceptions, the inspiring principles of the criminal order, and the full virtuality of the principles of presumption of innocence and in dubio pro reo is clear in the area of sanctioning authority, which shifts the burden of proving the facts and their authorship to the accuser. In this sense, the Constitutional Court, in its judgment 76/1990 of April 26, considers that the right to the presumption of innocence entails "that the sanction is based on acts or probatory means of charge or incrimination of the conduct reproached that the burden of proof corresponds to the accuser, without anyone being obliged to prove their own innocence; and that any inadequacy in the results of the tests carried out, freely assessed by the sanctioning body, must be translated into an absolute pronouncement. "

In the same way, the Supreme Court, in its judgment of 10/26/1998, declares that the right to the presumption of innocence "does not oppose that the judicial conviction in a trial can be formed on the basis of evidence indiciaria, but in order for this evidence to disprove said presumption, it must satisfy the following constitutional requirements: the evidence must be fully proven - it cannot be treated as mere suspicion - and it must explain the reasoning by virtue of which, based on the proven evidence, has come to the conclusion that the accused carried out the infringing conduct, then, otherwise, neither the subsumption would be founded in law nor would there be a way to determine if the deductive process is arbitrary, irrational or absurd, that is to say, if it has been violated the right to the presumption of innocence when considering that the evidentiary activity can be understood as a charge."

3. 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: "b) When there are no rational indications that the facts that have been the cause of the initiation of the procedure have occurred."

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 agreed to be archived.

resolution

Therefore, I resolve:

1. Archive the actions of prior information number IP 213/2022, relating to Clínica Girona, to the extent that during the actions carried out within the framework of the prior information it has not been established that any act has taken place that could be constitutive of any of the offenses provided for in the legislation on data protection.
2. Notify this resolution to Clínica Girona 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 articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, with the character of interested persons can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with Law 29/1998, of July 13, regulator of administrative contentious jurisdiction.

Likewise, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director