

File identification

Archive resolution of the previous information no. IP 258/2022, referring to the Catalan Institute of Health - CAP de Manso (hereinafter, ICS)

Background

1. 12/07/2022 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the ICS, on the grounds of an alleged breach of the regulations on data protection personal data

The complainant stated that through the answer to a lawsuit filed by him against his ex-wife, it had become clear that she knew the family doctor he had assigned ((...)), who is the the same that was assigned to his minor (common) son. He complained that ' *CAP Manso has provided this information since I have no communication or cordial relationship with this person and I never give him my personal data or information. He got the information from the CAP itself .*

Along with the complaint, he provided his ex-wife's letter of opposition in response to his claim. In the first paragraph of the fifth page it says verbatim: ' *In addition, when the minor reaches 15 years old he has stopped receiving medical attention in the Pediatric Line, the minor being a beneficiary in the card with the father, they have assigned the Doctor (. ..) that manages the father and he has not informed the mother by any means of communication, so we take advantage of this writing to demonstrate and give knowledge of the non-compliance on the part of Mr. (...) not to inform the other parent, the mother, of the change of doctor, of what the Ambulatory itself has been aware of when contacting her.'*

2. The Authority opened a preliminary information phase (no. IP 258/2022), 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.

3. In this information phase, on 07/21/2022 the reported entity was required to report on:

- On what date was the minor, son of the person reporting, assigned the (...).
- Confirm or deny whether the ICS provided the information relating to who was the doctor of the person reporting, to his ex-wife, Ms. (...). And that, in the event of an affirmative answer, indicate the date on which they would have provided this information to Ms. (...), and what was the legal basis that would justify the communication of this data. Or, in the event of a negative answer, provide the log of accesses to the complainant's clinical history on specific dates and justify each of them.

4. On 07/25/2022, the ICS requested from this Authority a copy of the letter of complaint as well as the extension of the deadline to respond to the request.

5. On 07/27/2022, this Authority resolved, with respect to the first request, that a copy of the complaint and also of that part of the attached documentation that had a direct relationship with the facts subject to the complaint were provided (pages 1 and 5 of the letter of opposition provided by the person reporting); and with regard to the second request, the deadline was extended by 5 more days, in accordance with article 32 LPAC.

6. On 6/09/2022, the ICS responded to the request through a letter in which it stated the following:

- That the minor was assigned to the (...) ' *by default* ', on 1/05/2022.
- That the administrative professional who served Ms. (...) facilitated ' *indirectly the information of the doctor of Mr. (...)* '. And then explains that ' *in the week of July 4 to 8, Ms. (...) presented him with his son's TSI and asked him which doctor he was assigned to, since he had moved from Manso's Pediatric Line to the Sant Antoni Primary Care Team. He informed him that he was assigned the (...). The mother asked why she had been assigned this doctor if she had another doctor. The administrative professional answered that the assignment of a doctor at the age of 15 is carried out by the computer application automatically and by default assigns the same doctor of the person holding the Social Security Number in which their child was included as a beneficiary, without give any more information to Ms. (...). (...)* '.
- With regard to the legal basis, he states that ' *this would be a necessary action within the context of assistance provision, to guarantee the adequate assistance of people who use the public health system. Therefore, it is considered to have an assistance nature and is carried out on the legal basis of the performance of a mission in the public interest and the exercise of public powers (Article 6.1.e) RGPD). In this sense, the assistance provision is excluded from the prohibition of treatment by article 9.2.h) RGPD* '.

The reported entity attached a screenshot showing the doctor's assignment date and indicating the type of assignment ' *by default* '.

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 stated that the ICS violated the confidentiality of his personal data as a patient since he provided the data of who his family doctor was to his ex-wife, with whom he has no relationship. To prove this, he provided a written statement of judicial opposition presented by his ex-wife (referred to in precedent 1) in response to a lawsuit filed by him.

For its part, the ICS, in response to the request, confirmed that the controversial information had been provided '*indirectly*', having informed the ex-wife of the complainant here that her common child had designated '*by default*' the same doctor as the person holding the social security number of which he was a beneficiary. And, to prove it, he provided a screenshot of the patient/beneficiary file (the son of the complainant here) in which it is observed that the assignment date was made on 05/1/2022 and in the '*assignment type*' box it is stated that the assignment is by '*default*'.

First, it is necessary to analyze the context in which the reported event occurs and the specific information provided by the reported entity. As confirmed by the ICS, the complainant's ex-wife attended the ICS and asked why her son was assigned a different doctor than hers. In response, the ICS told him that '*the assignment of a doctor at the age of 15 is carried out by the computer application automatically and by default it assigns the same doctor as the holder of the Social Security Number in which his child was registered as beneficiary*'. In other words, the ICS did not directly provide any personal information about the complainant, although, from the information provided, it was possible to know who the doctor was.

In the same sense, it is necessary to highlight the literalness of the letter of opposition provided by the complainant himself, in which the ex-wife reiterates the same explanation that the ICS had given her '*the minor being as beneficiary in the cartilla with the father, they have assigned the Doctor (...) who manages the father (...)*'.

At this point, given that the '*indirect information*' provided led to the disclosure of personal information of the complainant here, it becomes a key element to determine whether the ICS should have provided the information to the mother of the minor, who had requested to know the reasons because her son - 15 years old - had been assigned a professional different from the one she had or, on the contrary, the right of the person reporting, the child's father, to preserve the personal data consisting of who he was prevailed the doctor he had assigned.

In the case at hand, the ICS was acting in the exercise of the assistance provision competence entrusted to it, which is why the data processing it carried out has as its legitimizing basis that of article 6.1.e) RGPD, '*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*'; in relation to article 3.1.a) of Law 8/2007, of July 30, on the Catalan Institute of Health, which foresees '*The objectives of the Catalan Institute of Health are: a) To provide services preventive public healthcare, assistance (...)*'. And also, in relation to the exception that lifts the ban on the processing of health data, article 9.2.h) RGPD applies, which provides:

*' Section 1 shall not apply when one of the following circumstances occurs:
h) the treatment is necessary for (...) the provision of health care or treatment (...), based on Union or State Law members or under a contract with a health professional and without prejudice to the conditions and guarantees referred to in section 3 ;'*

Also, with respect to the fact of facilitating the identity of the assigned doctor and the reasons for assignment, it is necessary to invoke article 10 of Law 21/2000, of December 29, on the rights of information concerning health and 'patient autonomy and clinical documentation provides that the patient's clinical history includes, for what is of interest here, the '*doctor responsible for the patient*'; and, according to article 3, the holder of the right to healthcare information is the patient or '*the persons linked to the patient to the extent that the patient expressly or tacitly allows it*'. In the same sense, articles 4 ('*right to assistance information*') and 5 ('*Holder of the right to assistance information*') of Law 41/2002, of November 14, basic regulatory framework for the autonomy of the patient and rights and obligations regarding information and clinical documentation.

The aforementioned regulations, together with the principle of the best interests of the minor, lead to the conclusion that the parent's right to information prevails and, therefore, that it was in accordance with the right to inform the identity and the reason for assigning 'a specific doctor to her son, given that the reported data processing would be legitimized based on article 6.1.e) RGD in relation to article 9.2.h) of the same regulation.

For all that has been said, the fact reported does not constitute an infringement of the data protection regulations and, consequently, the complaint cannot succeed.

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 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: "*c) When the proven facts do not constitute, in a manifest manner, an administrative infraction;*".

Therefore, I resolve:

1. File the previous information actions number IP 258/2022, relating to the ICS.
2. Notify this resolution to the ICS 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.

The director,

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