

## File identification

Archive resolution of previous information no. IP 283/2022, referring to the EAP Osona Sud – Alt Congost, SLP.

## Background

1. On 08/08/2022, the Catalan Data Protection Authority received a letter of complaint against the EAP Osona Sud – Alt Congost, SLP (EAP), which manages the Centelles Primary Care Center (CAP Centelles), due to an alleged breach of the regulations on personal data protection .

The complainant stated that, on 02/05/2022 and 06/05/2022, his shared medical history (HC3) was accessed from CAP Centelles. In relation to this, the person making the complaint calls the accesses listed below improper, given that "I have not had any medical visit to the aforementioned CAP nor have I suffered from any illness that would justify them coming in to look":

Date of access	Health center/authorized persons	Information consulted
02/05/2022 15:21	NO SPARKS	Information clinical reports
02/05/2022 15:21	NO SPARKS	Summary information
02/05/2022 15:21	NO SPARKS	Clinical course information
05/06/2022 13:21	NO SPARKS	Clinical course information

Finally, he also explained that, on 28/05/2021, he filed a complaint with this Authority against the same EAP (IP no. 222/2021), in relation to other facts.

The reporting person provided various documentation relating to the events reported. In particular, he attached screenshots of his La Meva Salut virtual folder that allow the reported accesses to be viewed.

2. The Authority opened a preliminary information phase (no. IP 283/2022), 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 whether the facts were likely to motivate the initiation of 'a sanctioning procedure.
3. In this information phase, on 30/08/2022 the reported entity was required to report on the professionals who accessed the reporting person's HC3, with an indication of their professional category and the reason that justified the access.
4. On 30/08/2022, the EAP data protection officer responded to the request with a letter stating the following:

- That the "Head of Inspection and Technique of the APDCAT made us a request for information in relation to the same person with no. IP 222/2021. On 06/05/2022 and Registration ID number: 0199/902/2022 we proceeded to respond to said request. In said request, we were asked about the information in HC3 and the accesses made by the dentist of the CAP de Centelles (...). In order to be able to give a full response to said request of the APDCAT, I myself accessed the information mentioned in HC3 and on the dates and times mentioned by the complainant."
- That, "the justifying reason was to be able to respond to the previous requirement of the APDCAT in relation to the same reporting person, which became effective on 06/05/2022."

### 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 reported facts that are the subject of this archive resolution.

As a preliminary matter, reference should be made to the fact that the complaint filed against the EAP on 05/28/2021 ended with the filing resolution dated 05/06/2022, issued by the Director of the Authority.

For what is of interest here, the 8th antecedent of the aforementioned resolution includes the letter that the EAP presented and which pronounces on the contradiction between the content of the HC3 of the person making the complaint and the clinical history of CAP Centelles, in the following terms:

"(...) as can be seen in Figure\_3 (which is attached), in the data extracted from the clinical course of HC3 referring to care at the CAP de Centelles, the following warning is included in the heading : 'for technical reasons it has not been possible to retrieve all the information, the data listed is partial'. This is the reason why there are no entries prior to HC3 that are contained in the HC\_AP of the Centelles CAP. It can also be observed that the identification of the professional who attended to the patient in each visit is the same as that which appears in the HC\_AP of the CAP de Centelles and in HC3 (Figures 1, 2 and 3 [which contains the letter]). Therefore there is no discrepancy between the authorship of the HC\_AP and HC3.

Therefore, the discrepancy observed between the authorship of the annotations in the HC\_AP and HC\_3 actually corresponds between these and La Meva Salut. There is no authorship discrepancy between the HC\_AP and HC3 as it is proven. The cause of the observed discrepancy must be attributed to technical reasons, the complexity of the system, the tables and codes, their updating and for other reasons that we do not know, it appears by mistake in the LMS space an authorship of visits that do not correspond to those that exist in the HC\_AP, which are also different from those that

exist in the HC3; which, if they correspond with those of the HC\_AP of the CAP de Centelles."

It follows from the above that, in order to respond to this Authority's information request, notified within the framework of IP no. 222/2021, the EAP had to access the clinical information of the reporting person, given that it was the only way to compare the content of the HC3 with the content of the HC of CAP Centelles, and pronounce on it. So much so that the letter he submitted to the Authority, and which has been partially transcribed, was accompanied by images of the complainant's clinical course, which were downloaded on 05/06/2021.

Well, consulted by this Authority, the data protection representative of the EAP has confirmed that he was the author of the accesses to the HC3 that are the subject of this complaint. In essence, he has explained that he accessed the reporting person's health data, specified in precedent 1, in the exercise of his functions, with the aim of responding to the information request that this Authority notified, within the framework of the IP no. 222/2021.

In relation to the above, it should be noted that article 19 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, relating to the power of inspection, establishes that the The Authority has the power to request the presentation or transmission of documents and data to the entities included in the scope of application of the Law. And, with respect to these entities, it establishes that they have the obligation to assist, on a preferential and urgent basis, the Catalan Data Protection Authority in its investigations, if it asks them to do so.

In turn, paragraphs *d* and *e* of article 39 of the RGD attribute to data protection delegates the functions of cooperating with the control authority, as well as acting as the authority's point of contact for issues of any kind related to the processing of personal data.

Therefore, there is no doubt that the data protection representative of the EAP had the obligation to respond to the request for information sent by this Authority, within the framework of IP no. 222/2021. And, in relation to this, it is certified that the accesses to the HC3 of the reporting person, made during the period between 3:21 p.m. on 05/02/2022 and 1:21 p.m. on 06/ 05/2022, were due accesses, given that they were necessary so that the professional who had to respond to the request could fulfill it.

For all that has been said, this Authority does not have any elements that allow it to maintain that the accesses transcribed in the 1st precedent violated the regulations for the protection of personal data, which is why these actions must be archived.

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 dismissal is appropriate: "a) When the facts do not constitute an administrative infraction."

In accordance with everything that has been set forth in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information, no fact

has been proven that could constitute any of the violations provided for in the legislation on data protection, it is necessary to agree on its archiving.

**resolution**

Therefore, I resolve:

1. Archive the actions of prior information number IP 283/2022, relating to the EAP Osona Sud – Alt Congost, SLP, since it has not been established that any act has taken place that could constitute any of the violations provided for in the legislation on data protection.
2. Notify this resolution to the EAP Osona Sud – Alt Congost, SLP and the reporting person.
3. Order that the resolution be published 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, the interested parties may file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after 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, interested parties may file any other appeal they deem appropriate to defend their interests.

The director