

## File identification

Archive resolution of the previous information no. IP 305/2022, referring to the Department of Health.

## Background

1. On 04/09/2022, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Department of Health, on the grounds of an alleged breach of the regulations on protection of personal data .

Specifically, the person making the complaint highlighted " *I have many entries in my HC3 from the Department of Health without my having authorized them* " and accompanied his complaint with a letter, dated (...)/2022, which the Citizen Service Department of the Catalan Health Service had directed him in response to a previous request, "*in relation to the right of access (traceability) to the data available in his shared clinical history of Catalonia* ". In this response, the reporting person was provided with the list of accesses to their medical history, " *data extracted to day (...)/2022*", specifying the day, time, place of access and the information consulted . The list of accesses to the clinical history included the 10 accesses made by the Department of Health that are the subject of a complaint, specifically, the following:

- on (...)/2019, 3 accesses are registered, but 1 single access is considered to be consecutive;
- on (...)/2019, 5 accesses are registered, but 1 single access is considered to be consecutive;
- on (...)/2020, 2 accesses are registered, but they are considered 1 single access to be consecutive .

2. The Authority opened a preliminary information phase (no. IP 305/2022), 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 16/09/2022, the reported entity was required because, in each of the 10 accesses that were included in the record of the reporting person's clinical history, carried out on (...)/2019, (...)/2019 and (...)/2020, from the Department of Health, identify the people who accessed the medical history of the reporting person, indicating the professional category they held within the organization As well as, reporting the reasons that would justify each and every one of the accesses to the clinical history during the specified days.

4. On 19/10/2022, during this preliminary information phase and after the 10-day period granted to respond to the first request, the Authority sent a second letter to the reported entity so that in the maximum period of 5 days to provide the requested information.

5. On 07/11/2022 , the Department of Health responded to the aforementioned request through a letter, dated 05/11/2022, signed by the general secretary of the Department of Health, in which it stated the following:

- That the reporting person, *"at the end of 2019, presented a suspected individualized compulsory declaration disease."*
- That *"These diseases are notified through two channels: medical care and microbiology, as stated in Decree 203/2015."*
- That *"Among the actions taken by Public Health are to verify if the case meets clinical and microbiological criteria to give the case as confirmed or not, and to carry out the actions of Public Health that derive specifically from the disease and analyze the epidemiology of diseases in our environment."*
- That *"In this particular case the notification by the microbiologist was doubtful, it did not meet the established criteria, and it was reviewed at the HC to verify if it was a confirmed case or not."*

The Department of Health also included in this written response a screen print specifying that the accesses to the complainant's medical history, dated (...) /2019 and (...) /2019, they would have been carried out by the *"(...) of Epidemiological Surveillance and Response to Public Health Emergencies "* and that the access dated (...) /2020, would have been carried out by *" (...) of prevention of emerging diseases"*, all carried out by the Department of Health.

### **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 about the alleged improper access to his Shared Clinical History of Catalonia (HC3), made by the Department of Health, on (...) /2019, (...) /2019, (...) /2020, without your authorization.

For its part, the reported entity certified that the referenced accesses had been carried out by the *" (...) of Epidemiological Surveillance and Response to Public Health Emergencies "* and the *" (...) of prevention of emerging diseases "*, both units belonging to the Public Health Secretariat of the Department of Health. In this sense, they justified said accesses because these would have been carried out in order to verify whether the *" suspected disease of mandatory individual declaration"*, referring to the reporting person, which had been informed to them by the microbiologist in charge of the case, met the clinical and microbiological criteria to give the case as confirmed or not, given that *" the notification by the microbiologist was doubtful, it did not meet the established criteria(..). "*

## 2.1 About the accesses to the HC3 made during the year 2019

First of all, in relation to the accesses to the HC3 of the reporting person, dated (...) /2019 and (...) /2019, carried out by the "(...) of Epidemiological Surveillance Services and Response to Public Health Emergencies", it should be noted that, from the documentation provided by the Department of Health, there is no element that allows it to be maintained that said access by said health professional was improper or unjustified. In this sense, it is necessary to take into account the circumstances presented by the Department of Health, that in the case of the person making the complaint they were faced with the suspicion of an individualized mandatory declaration disease, and that the person who accessed the HC3 did it in the exercise of the functions of his workplace, and without contravening the provisions of the health legislation that contemplates access to the clinical history by those involved in his diagnosis (art. 11 Law 21 /2000 and 16 Law 41/2002).

But it is that, in addition, in the improbable and unproven case that there had been improper access to the HC3 of the reporting person, the responsibility that could eventually have been derived from this illegal conduct, is would have expired in the present case due to prescription. Indeed, illicit access to the HC3 would constitute an infringement provided for in article 83.5.a) of the RGPD, which typifies as such the violation of "the basic principles for treatment", among which the principle of confidentiality is at the top. Article 72 of the LOPDGGD provides that the infringements provided for in article 83.5 of the RGPD are considered very serious and have a three-year statute of limitations. In the case in question, the accesses to the medical history took place on (...) /2019 and (...) /2019, and therefore, at the time of submitting the complaint to this Authority, on 09/04/2022, the eventual infraction committed was close to being time-barred, and, in any case, it would already be time-barred on 11/07/2022, the date on which the reported entity responded to the requirements had addressed within the framework of this preliminary information phase, (on dates 16/09/2022 and 19/10/2022), a circumstance that, in their case, would also have prevented this Authority from being able to exercise any action of prosecution of the alleged infringement, since the prescription of the infringement causes the extinction of the responsibility that could be derived from the eventual infringing conduct.

## 2.2 On the access to the HC3 made during the year 2020

At the very least, it has also been proven that access to the medical history of the complainant, dated (...) /2020, was carried out by the "(...) for the prevention of emerging diseases", which within the organization chart of the entity, it is a workplace that at the time the events happened was located within the Prevention and Control of Emerging Diseases Service of the General Sub-Directorate for Surveillance and Response to Public Health Emergencies of the Department of Health, (article 53.2.d. of Decree 6/2017, of January 17, on the restructuring of the Department of Health, in force at the time of the events reported).

Well, in this regard, it can already be said that, from the response to the request for information from this Authority, it is considered that in the context of the context in which said access occurred, it would be justified in the exercise of the specific functions of the site of work of the person who accessed it.

In this regard, it should be borne in mind that the access on day (...) /2020 to the HC3 of the person reporting, as well as with the previous cases, would be related to the fact that "at the end of 2019, presented a suspected individualized compulsory declaration disease", which

they must be notified to the Epidemiological Surveillance Network of Catalonia (article 1 and article 6.b. of Decree 203/2015, of 15 September). In this sense, it is not superfluous to point out that one of the organic units that are part of the Epidemiological Surveillance Network of Catalonia is the General Sub-Directorate for Surveillance and Emergency Response, where the workplace of the professional who carried out the the said access, and it has, among other functions, that of "*directing, coordinating and promoting the systematic monitoring of notifiable diseases and of the microbiological notification system of Catalonia*" (article 53.1.d) of Decree 6/ 2017, of January 17, of the restructuring of the Department of Health, in force at the time of the events reported).

Therefore, and with regard to access to the HC3, dated 03/17/2020, by the "*(...) for the prevention of emerging diseases*", it should be borne in mind that the person reporting few months earlier he had presented a suspected notifiable disease, and according to the entity, the microbiologist's notification "*it was doubtful, it did not meet the established criteria*", which is why a series of actions were carried out in order to find out if it was a case of a confirmed disease, which would therefore justify that a person in charge of notifiable diseases mandatory of the Department of Health, in the exercise of his professional functions, he had had to access the HC3 of the reporting person. In short, in view of the information contained in the proceedings, this Authority does not have any elements that allow it to question the reasons put forward by the reported entity that would justify the reporting person's access to the HC3.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that 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 violations provided for in the legislation on data protection, should be archived.

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

Therefore, I resolve:

1. File the previous information actions number IP 305/2022, relating to the Department of Health.
2. Notify this resolution to the Department of Health 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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