

## File identification

Archive resolution of previous information no. IP 415/2022, referring to the Terrassa Mutual Assistance Foundation.

## Background

1. On 14/11/2022, the Catalan Data Protection Authority received a letter of complaint against the CAP of Sant Cugat del Vallès - dependent on the Terrassa Mutual Foundation (FAMT) -, on the grounds of an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant complained that a person who provided services at this health center had accessed his shared medical history (HC3), without his consent.

Along with the complaint, a letter was provided in which the Catalan Health Service informed her that on 01/20/2021, at 4:43 p.m., the professional Mrs. (...)he accessed his HC3 from CAP Sant Cugat.

2. The Authority opened a preliminary information phase (no. IP 415/2022), 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 16/01/2023 the reported entity was required to provide the record of access to the complainant's clinical history (HC), from 01/01/2021 to 31/ 01/2021 (both inclusive). The following information related to access from CAP Sant Cugat must be included in this register:
  - a) Identification and professional profile of the person who accessed it.
  - b) Information (logs) accessed.
  - c) Access justification.
4. On 01/24/2023, the FAMT responded to the aforementioned request through a letter in which it stated the following:
  - That "The only identified access [to the reporting person's medical history] is the one dated 01/20/21, which prompted the report."
  - That "The professional who carried out this access, (...) (...) on that date was a nurse at CAP St. Caught Despite not currently working at the FAMT, the professional who carried out this access has been asked to justify the reason. Ms. (...) has reported that this access was carried out in the context of the tasks that had been assigned to him in relation to the management of SARS-Covid19 positives and contacts, as part of the RedCov team . "

— That " the RedCov project in Primary Care, centralized in CAP Valldoreix (which functionally and administratively depends on CAP St. Cugat), and integrated by a team of professionals in the clinical and epidemiological field, was, in the period of the SARS-Covid19 pandemic (that is, within the temporary context of the access that has motivated the complaint, in January 2021, support for hospital and emergency services (...)."

— That "The follow-up of patients by the RedCov team was carried out from lists in which, based on the principle of data minimization, only the clinical history number (NHC) of these . Following the reported complaint, we have verified that, in the list of patients that was managing (...) on 20/01/21, there is a patient with NHC (XXXX) (the NHC of the complainant in Mútua Terrassa is (...). The management of the NHC patient (XXXX) was recorded in the same time slot as the access to the HC (...) and from this we infer that the professional's access to the complainant's HC took place by mistake when writing the number of HC, because it was about successive managements in time, and the NHCs only differ in one number."

The reported entity attached to the letter a copy of the record of accesses to the medical history of the reporting person, in which a single access is observed on the day and time above, which coincides with the reported access.

5. On 03/15/2023, also during this preliminary information phase, the reported entity was again required because:

— Provide the list of patients managed by Mrs. (...) on 01/20/2021, which would include the NHC (XXXX) that would have caused the typing error.

— Accredit the day and time of access to the HC (XXXX) and the information consulted.

— Accredit the NHC assigned to the reporting person in the management systems of the FAMT ((...)).

— Provide the detailed logs of the HC of the reporting person on 20/01/2021, especially the consultation time of each record/information (entry and exit time).

RedCov project , the specific information or records consulted by Ms. (...) when he accessed the complainant's HC.

6. On 03/29/2023, the reported entity responded to the request through a letter in which it stated the following:

— Which provided "the list of all the clinical history numbers of patients who were managed by this professional on 20/01/2021 [hereinafter REG 1], among which is the NHC (XXXX) ( 4:43 p.m.), and in the record immediately preceding this HC, there appears the NHC (...) (4:42 p.m.) [linked to the complainant here], which access has motivated the patient's complaint (...)."

— That "The information on the day and time of access to the NHC (XXXX) is contained in the access log provided (...)."

- That provided "the details of the information of this NHC (XXXX) consulted by the professional on the date indicated [hereinafter REG 2]."
- That provided "the certificate issued by the (...) director of the Clinical Documentation Department of Mútua Terrassa, which confirms that the clinical history of Mútua Terrassa no. (...) corresponds to Mr. (...)", who is the reporting person.
- Which provided "the details of the *logs* and the exact times of access to the NHC information (...)." It added that "The time of permanence in each information is inferred from the time of access to the next screen/record [hereafter REG 3]."
- That provided "the report issued by the (...) responsible for the RedCov project , in relation to the need to verify certain medical parameters in the clinical history of Covid patients (...)" and, specifically, those who Mrs. (...) consulted the HC of the person reporting.

As I mentioned, among other documents the FAMT provided the following:

- a) Document REG 1, which contains a list of the accesses to various HC carried out by the professional Mrs. (...) on 20/01/2021. In this list, it can be seen that on that day he accessed the complainant's HC at 4:42 p.m., and the HC (XXXX) at 4:43 p.m.
- b) Document REG 2, which contains the parameters consulted by Ms. (...) in relation to the NHC (XXXX). The first parameter was viewed at 16:43.
- c) Document REG 3, which contains the parameters of the HC of the reporting person consulted by Mrs. (...). The first parameter was viewed at 16:42:17.

## **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 filing resolution.

The complainant complained that a professional person from the CAP of Sant Cugat del Vallès, dependent on the FAMT, had improperly accessed his HC3.

In response to the request to justify the controversial access, the reported entity stated that this access had occurred due to a typing error. The professional person, who in the exercise of the functions entrusted to him in the framework of the RedCov project had to consult certain parameters in several clinical histories, would have entered a number greater than the NHC number (XXXX), which is what he it was appropriate to consult Thus, there was access by mistake to the HC number (...), belonging to the complainant.

Regarding this, it must be said that the records and reports provided by the FAMT, and which are detailed in the 6th precedent, would support this explanation. In effect, it is established: first, that the NHC of the reporting person differs in a figure from the NHC that the professional had to consult; and, secondly, that the professional accessed the reporting person's HC on 01/20/2021 at 16:42, and at 16:43 at NHC XXXX. To the above, it should be added that the person in charge of the RedCov project has adequately justified the need to access the HC3 of certain patients within the framework of this project, which would explain the professional's punctual access to the HC3 of the reporting person

At the discretion of this Authority, the reported entity has justified and sufficiently proven that this punctual and ephemeral access to the HC of the reporting person was the result of an error when typing a HC number. This action cannot be considered an administrative offence.

3. Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that proceedings must be archived when in the instruction of the procedure the following is highlighted: "a) When the facts are not constitutive of an administrative infraction; (...)."

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. File the previous information actions number IP 415/2022, relating to the Terrassa Mutual Assistance Foundation.
2. Notify this resolution to the Fundació Asistencial de Mútua de Terrassa 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 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

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