

## File identification

Archive resolution of the previous information no. IP 440/2022, referring to the ICS (Directorate of Primary Care of Lleida).

## Background

1. On 11/23/2022, the Catalan Data Protection Authority (APDCAT) received a letter of complaint against the Primary Care Directorate of Lleida, belonging to the Catalan Institute of Health (ICS), due to an alleged breach of the regulations on the protection of personal data.

The complainant stated that, on (...), he called "the Directorate of Primary Care (DAP)", in the town of Lleida, to complain about the alleged irregularity in "the assignment of internment temporary" for a position "in the category (...)", and that the person who attended told him that "the personnel department" would contact him to resolve his query. However, on date (...) he received the answer to his inquiry, through an email with the subject "inquiries about internships", and which had been sent from the corporate email address of 'a worker of the entity "not authorized to respond to claims".

The person making the complaint added that, in addition, the person who had sent him the email dated (...) was precisely the worker of the Lleida DAP, to whom, allegedly, he would have been assigned a temporary internship in an irregular manner; he was, therefore, the person mainly affected by the subject of his inquiry. In the last one, the complainant explained that, on the same day that he received the controversial email, he filed a complaint with the DAP of Lleida about these events, in which he requested information on the scoring criteria for appointing temporary interns within the organization.

The person making the complaint accompanied his written complaint with the following documentation:

- Copy of the e-mail dated (...), at (...) hours, received at the complainant's personal e-mail address (...), sent from a corporate e-mail address (...), with which a response was given to the telephone inquiry made by the person reporting on date (...), relating to the assignment of internships.
- Copy of the generic instance presented by the complainant on date (...), at (...) hours, with entry registration no. (...), addressed to the Directorate of the ICS, with the subject "(...) Claim against DAP LLEIDA for assignment of contracts with alleged irregularities."
- Copy of the letter of claim that the complainant attached to the generic instance of (...). In this letter he set out, among other things, the following:
  - That on date (...) he had called the DAP of Lleida, due to an "alleged irregularity" in the assignment of an interim position to a professional of the DAP of Lleida.
  - That, on date (...), he had received a "message" sent by the professional in respect of which the complainant claims "interimity".

- That, according to "the (...) staff recruitment" of the Lleida DAP, the professional who sent the reply email "was not responsible for answering" the query made by the complainant.
2. The Authority opened a preliminary information phase (no. IP 440/2022), 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 02/15/2022 the reported entity was required to report on the following:
    - The people who had access to the complainant's personal data (name, surname, email address and the details of their complaint/telephone inquiry from (...), as well as the positions they hold and functions they perform within the organization
    - If the person who dated (...) sent an email to the complainant, he did so in the exercise of his duties (responding to complaints/inquiries). Otherwise, what reasons would explain why he had access to the query made by the person reporting and to the rest of the personal data.
    - On whether it was taken into account that the person who answered the telephone query of (...) was directly identified/affected in said query. Also, about the eventual actions carried out at the Lleida DAP after the events reported.
  4. On 08/03/2023, the ICS responded to the aforementioned request through a letter in which it stated the following:
    - That "(...) The claimant in his brief omits the fact that **he received two different answers to two different inquiries**. First of all, he made a telephone inquiry on (...) which was a **generic inquiry** relating to the procedure for temporary appointments (which was **answered and answered by email by Mr. (...)** ). At a later time, he made **a second query by email on (...) more specific in relation to the procedure for assigning the internship position granted to a professional with a lower score than him, and which was received and answer by someone other than Mr. (...)**. "
    - That "(...) the answer given by Mr. (...) did not involve accessing any personal data of Mr. (...)", here denouncing , "but only to answer a generic query related to the procedure for assigning internships. This information appears in the report attached as Document 1."
    - That, with regard to the functions of the professional who answered the telephone inquiry of (...), "(...) as indicated in the report of the Human Resources Unit of the DAP of Lleida " (provided as Document 1), "The jobs are distributed among the different professionals, looking for the specialization of each task, but they are all entrusted with the function of customer service (face-to-face, telephone or other means)."

- That "In this sense, the story presented" by the complainant "does not correspond to the reality of the facts, as it omits elements that are contained in the document provided by the Human Resources Unit of the DAP of Lleida."
- That "Also, there is no illicit access to any type of personal data by Mr. (...), since he limited himself to answering a generic query."

The reported entity only provided as attached documentation the report issued by (...) of the Primary Care Human Resources Unit of Lleida (provided as Document 1). In this report, the following is set out in summary:

- That the HR Unit of the Lleida DAP "is organized according to the provisions of article 6 of Decree 277/2001, of October 23, which regulates the management, management and administration structures of health institutions in the field of primary care of the Catalan Institute of Health."
- That " The jobs are distributed among the different professionals, looking for the specialization of each task, but they are all entrusted with the function of customer service (face-to-face, telephone or other means)."
- That " Telephone and face-to-face inquiries are answered by the person who attends at that time to the user making it, if they have knowledge of it. If he does not have the knowledge to answer, he is referred internally by the person who manages the consultation process."
- That the professional who answered the call of the day (...) is "one of the professionals who attends the most telephone calls and the most face-to-face users. Like the rest of his colleagues, if he has knowledge about the query, he answers it and, if he doesn't, he refers it to the person/s who have more knowledge about the subject."
- That, in relation to the events reported, on (...) the complainant "called HR by phone and was answered by Mr. (...), because he is the one who, randomly, picks up that call. Mr. XX identified himself with his first and last name, and as a SAP worker (...). He expressed to Mr. XX that he had a complaint because an interim appointment had been given to someone before him, and asked for information on how they allocated interim appointments. "
- That the Lleida DAP professional who answered the call from (...) "couldn't know that" the complainant "was referring to the selective process for which he was granted the internship", given that the complainant "in at no time did he identify the selective process in question".
- That the worker who answered the call "undertook to answer the query for generic information on how the interim appointments were assigned", and that on (...) "(since the day ( . ..) had a party)" gave a response to the complainant, through an email that he sent to "the email address provided by the complainant."
- That , on date (...), the complainant "sent an email to the generic HR email where he complained about the internship granted to a professional with a lower score than him. Responding to this specific query, the HR professional who manages the Unit's generic

mail referred it to (...) of the Training and Selection Sub-Unit, which gave her an answer on (...)."

- That on (...) "subsequent to the response sent by email by (...) of the Subunit, Mr. (...) presented a claim through the `serc@t` , reiterating that he wanted the position granted to Mr. (...)."
- That the two queries made by the claimant, both the one (...) via telephone and the one (...) via email, " were answered by different people." The first query was "about the procedure in general" and an answer was obtained through the controversial email dated (...). The second inquiry that was sent "to the HR email was about the specific selection process in which the complainant had participated."
- That both queries "were dealt with independently", without the people who answered them being aware that there was another query submitted by the same person, and that "the two responses agree that the selection process allocated the appointments interim by profile".
- That the employee who answered the complainant's telephone inquiry and who later responded by email "could at no time have known that Mr. (xxx)'s complaint referred to the selection process for which he was appointed interim, as is evident in his answer."

### **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.

In his letter, the complainant stated that, on (...), he had made a telephone inquiry to the DAP of Lleida about "the assignment of temporary internship" for a position "in the category ( ...)". In relation to this, he complained that on (...) he received the answer to his query, through an email with the subject "queries about internships", sent from the email address corporate identity of an employee of the entity "not authorized to respond to claims."

Regarding this, the complainant complained that the DAP of Lleida would have provided his personal contact details (specifically, the name and surname, the personal email address and the details of his inquiry) to the finger employee. On this, he added that this worker was, in addition, the person to whom, presumably, the temporary internship would have been assigned irregularly , and that would have motivated his telephone inquiry on the date (...).

In the framework of the previous information actions, the reported entity points out that the same reporting person formulated "two different queries" about the " interim appointments by profile", which resulted in "two different answers."

On the one hand, on (...) the complainant made a generic telephone inquiry, referring to "the procedure for the appointment of temporary staff", which was answered by the DAP de Lleida professional who, "randomly", answered the call and that, on date (...), he sent a response by email "to the personal email address provided by the complainant". This professional from the Lleida DAP "at no time accessed any database", but rather knew the complainant's identification data because, at the time of the call from (...), the complainant "identified himself with first and last name." He could not know that the consultation was related to the "selective process for which he was granted the internship", because the complainant "at no time identified the selective process in question."

Therefore, according to the entity, it was a fortuitous fact that it was the referenced worker who answered the inquiry by telephone and then responded by email, without the said worker being aware that the inquiry referred, precisely, to the position that he occupied as an interim.

There is no element to question this version. Certainly, from the terms used in the response sent through the controversial e-mail, it can be inferred that the telephone inquiry made by the person making the complaint was made in general terms, without specifying any procedure that indicated that it was just referring to the process followed to appoint as in the interim the worker who at that time attended to him by telephone. In this sense, it should be noted that in the text of the email dated (...) no selective process is specifically identified, neither in the title of the subject of the message ("Inquiry about internships") nor in its content (which describes the processes by which "interim appointments are granted: recruitment and calls.").

In relation to this, the entity points out that the aforementioned worker has among his professional duties that of customer service and, therefore, that of answering telephone inquiries and responding to them through different channels. Therefore, the processing of personal data that would have been carried out by the worker, both at the time when he answered the complainant's call and at a later time, when he sent a reply to the inquiry by email, is understood to have been carried out in exercise of their administrative user service tasks. Also, there are no indications that the worker accessed any database or file to which he could not have access in accordance with his professional duties, since according to the entity - and it does not contradict the complainant's version - , the contact details used to send the controversial email were communicated directly by the complainant so that the entity could respond to their query.

On the other hand, the claimed entity states that, on date (...), the same complainant also sent an e-mail to the human resources e-mail box of the Lleida DAP, to formulate "a second inquiry "; this time "more specifically, in relation to the procedure for assigning an internship position to a professional with a lower score than him ." In this case, "the HR professional who manages the Unit's generic mail", referred the query from (...) to the "(...) of the Training and Selection Subunit", which gave her response on the day (...). Therefore, on this second occasion, in which the complaint was already more precise and contained data that allowed the identification of the affected persons in relation to a specific procedure for the allocation of an internship position, the query was not processed by the worker who answered the first query formulated in general terms, but by (...) the human resources unit whose competence was this more specific matter.

Apart from the statements of the complainant, there is no other element that allows us to corroborate that the Lleida DAP has processed data contrary to the data protection regulations.

At this point, it must be taken into account that the sanctioning administrative procedure is particularly warranted, due to the consequences that may arise from it. That is why, to initiate it, there must be enough evidentiary elements or rational indications that allow the commission of an offense to be imputed, which in the case under examination do not concur.

Therefore, on the basis of the principle of presumption of innocence provided for in article 53.2. *b* of the LPAC, which recognizes the right "to the presumption of non-existence of administrative responsibility until the contrary is proven", these actions should be archived.

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 on its archive.

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

## **resolution**

Therefore, I resolve:

1. File the previous information actions number IP 440/2022, relating to the Catalan Institute of Health .
2. Notify this resolution to the Catalan Institute 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 February 20, which approves the Statute of the Catalan Data Protection Agency, with 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 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.

Machine Translation