

File identification

Archive resolution of the previous information no. IP 472/2022, referring to EGARSAT, Mutual partner with Social Security no. 276.

Background

1. On 12/19/2022, the Catalan Data Protection Authority received a letter from a person who filed a complaint against EGARSAT, Mútua collaborating with Social Security no. 276 (hereinafter, EGARSAT), due to an alleged breach of the regulations on personal data protection .

In particular, the complainant stated that a doctor from the mutual EGARSAT stated the following in a report: "it is not included in HC3 - shared clinical history - treatment (...)", so he considers that it has caused an unauthorized and illegal access to your personal data, specifically to your HC3. He adds that the doctors of the occupational accident mutuals do not have access to the ECAP program of the Department of Health or to the HC3, and claims that the aim of this illegitimate intrusion is to cause him serious harm, already that EGARSAT has a financial interest in having the degree of permanent disability granted to him reviewed.

The complainant attached a copy of the medical report he mentioned in his letter of complaint.

2. The Authority opened a preliminary information phase (no. IP 472/2022), 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 02/01/2023, the reporting person was required to indicate the name of the entity where he provided or would have provided services and that the reported entity would have as a mutual collaborator.

4. On 02/01/2023, the reporting person responded to the aforementioned request by means of a letter in which he explained that he provided services for the Consorci Sanitari del Maresme, which had coverage for professional contingencies with the reported mutual.

5. On 01/03/2023, also during this preliminary information phase, EGARSAT was required to indicate, first of all, what was the origin of the information linked to the HC3 that a practitioner from said mutual expressed in the report it issued in relation to the person reporting, and that it accredits said origin, as well as indicating the date on which it was obtained. It was also required, in the case that the source had been the doctor's access to the Department of Health's HC3 file, to report whether the doctors serving EGARSAT have access to the HC3 files and, if they answered negatively, in which quality would have been accessed by the issuer of the controversial report.

6. On 09/01/2023, the reported entity responded to the aforementioned request by means of a letter in which it explained that the reporting person has a recognized disability benefit and that, for this reason, EGARSAT, as a mutual collaborator of the Social Security had access

to two opinions issued by the General Directorate of Health Planning and Regulation, of the Department of Health, consisting of a medical opinion for control of temporary incapacity, dated 04/26/2021, and an opinion medical assessment, dated 09/29/2021. He added that this documentation refers to the complainant's HC3, so the doctor limited himself to transcribing its content in his own report.

Given that the requested entity did not provide a copy of the opinions it mentions in its response, they were claimed on 11/01/2023, at the same time it was asked in what capacity EGARSAT had access to them.

The requested entity provided, on 12/01/2023, a copy of the medical assessment report, dated 29/09/2021, issued by the General Directorate of Health Planning and Regulation, which refers to the HC3 of the person making the complaint, and informed that said document had been sent to them by the National Institute of Social Security (INSS), on 02/14/2022, as part of a previous claims procedure in the matter of work incapacity

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 of improper access to his medical history (HC3), of which he became aware through a medical report sent to him by the mutual EGARSAT in which it was indicated, specifically, that "it is not recorded in HC3 treatment (...)". Due to this mention, the reporting person considered that the doctor who issued said report had improperly extracted the data from his HC3, to which he would not have access as medical staff of the reported mutual.

When the reported entity was asked to justify the legal basis on which it had accessed the HC3 of the person making the complaint, it certified that the reference to the HC3 in question was taken from a report issued by the Directorate General of Planning and Health Regulation that had been sent to them by the INSS, taking into account that EGARSAT, as a mutual collaborator of the Social Security, had the status of an interested party in the procedure regarding the work incapacity of the reporting person.

Well, apart from the statements of the now complainant, which are in the scope of his suspicions about the origin of the information to which the reported entity had access, no other element is available which allows to corroborate that there has been improper access to your HC3. On the contrary, as has been advanced, EGARSAT has proven in a reasoned and sufficient manner that the mention of the HC3 that is made in the report issued by a professional of said mutual has its origin in the aforementioned opinion issued by the General Directorate of Ordenació y Regulació Sanitària, which had been sent to them by the INSS since, as a mutual collaborator, EGARSAT had the status of an interested party in the work incapacity procedure of the person making the complaint.

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

Therefore, I resolve:

1. File the previous information actions number IP 472/2022, relating to EGARSAT, Mutual collaborator with the Social Security no. 276.
2. Notify this resolution to EGARSAT, Mútua collaborating with Social Security no. 276 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,