

## File identification

Archive resolution of previous information no. IP 206/2023, referring to the Catalan Health Institute.

## Background

1. On 04/17/2023, the Catalan Data Protection Authority received a letter of complaint against the Catalan Institute of Health (ICS), on the grounds of an alleged breach of the regulations on data protection personal data

First of all, the complainant stated that, by email dated (...)2022, he had requested "from the Territorial Management of Lleida of the Catalan Institute of Health, the traceability of ALL accesses" to your medical history, carried out from "(...)2020" to "(...)2022". Regarding this, the complainant complained because, on (...)2023, after a "delay" of "more than eight (8) months", he received "by ordinary postal mail" the response from the ICS, accompanied by a copy of the log of access to your medical history, with the extraction date of (...)2022. This record only referred to the traceability of accesses made from the Arnau de Vilanova de Lleida University Hospital (HUAV), even though in his complaint the complainant stated that his request referred to accesses made from "all the territory and from any center."

Secondly, the complainant complained because, in his response, the ICS indicated that "all the accesses" had been carried out with a "care" purpose. But, regarding this, he maintained that "I didn't go to the Arnau hospital in Lleida for anything" on none of the days that the accesses were recorded and, therefore, it was "unmotivated" accesses.

Finally, the complainant stated that, by email dated (...)2023, he submitted a second request "to the Territorial Administration of Lleida" of the ICS, through which he requested "the traceability of ALL the accesses" to your medical history, made from "(...)2022" to "(...)2023; it specified that it was referring to the accesses carried out "from any point in Catalonia". The complainant complained because, on (...)2023, the Territorial Management of the ICS of Lleida sent him an email asking him to "fill in the SAME form" that he had already sent, attached, "duly completed and signed", with the email dated (...)2023.

The reporting person provided various documentation relating to the events reported.

- A copy of the application form for the exercise of the right of access "(traceability)", dated (...)2022, by means of which he asked the ICS for access to "ALL access to my clinical history from (...)2020 to (...)2022."
- A copy of the response from the ICS dated (...)2023, signed by (...) of the Citizen Service Unit of this entity and (...) of the HUAV hospital center of Lleida, which was sent to the complainant by postal service, with a record of departure on (...)2023 from "the Territorial Administration of Lleida - Hospital Arnau de Vilanova", with the following reply:

"(...) In response to your request on the day (...)2022 of traceability in which, exercising the right of access to the clinical history, you requested information on the accesses that have taken place, I am informing you that, with regard to the Arnau de Vilanova de Lleida University Hospital, all accesses have been carried out for the purpose of care and that, therefore, they are justified.

For your information, we are attaching the list of accesses to your medical history.

I inform you that in case of disagreement with the content of this letter, you can claim protection from the Catalan Data Protection Authority."

- A copy of the record of access to the clinical history that the ICS gave to the reporting person with the title "Traceability from day (...)2020 to (...)2022." This document contains the name of the person making the complaint and the details of the 12 accesses made from the HUAV hospital center in Lleida, which are the subject of the complaint. Specifically, the following:
  - On (...)2021, 4 accesses are registered, but they are considered 1 single access as they are consecutive.
  - On (...)2021, 3 accesses are registered, but they are considered 1 single access to be consecutive.
  - On (...)2021, 1 access was registered.
  - On (...)2022, 1 access was registered.
  - On (...)2022, 2 accesses are registered, but they are considered 1 single access as they are consecutive.
  - On (...)2021, 1 access was registered.

It is observed that the date of extraction of this access register is (...)2022, and that it includes the details of the population, the time, the date, the professional category of the people who performed the access, the care center and the justification for each of the accesses.

2. The Authority opened a preliminary information phase (no. IP 206/2023), in accordance with what is provided for in 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 disciplinary procedure against the entity reported for an infringement of data protection regulations.
3. On 04/21/2023, a letter was sent to the complainant to inform him that the preliminary information phase had been opened for the facts reported regarding the eventual improper access to the medical history, as well as the alleged neglect of the exercise of the right of access to the traceability of access to the clinical history.

On the other hand, following the letter of complaint submitted by the person making the complaint, the Authority had also initiated the rights protection procedure (No. PT 51/2023), which was only intended to resolve whether the ICS would have attended incompletely the first request to exercise the right of access to the traceability of accesses

to the clinical history, made by the person reporting to the ICS on (...)2022, and that the ICS answer on (...)2023. With regard to the second request to exercise the right of access, presented to the ICS on (...)2023, the Authority informed the complainant that, if the entity responsible for the treatment ( in this case, the ICS) did not give him an answer within one month, he could lodge a claim with the Authority.

Finally, in relation to the complainant's complaint about the fact that the ICS had asked him to fill in a specific model form to request the traceability of access to the medical history, he was requested to provide a copy of the email email that he sent to the ICS, dated (...)2023, and a copy of the request for access to the traceability of access to the clinical history, which he attached to this email .

**4.** On 03/05/2023, the complainant responded to this office and provided the following documentation:

- A copy of the email that on (...)2023 he sent to the corporate email address of the Citizen Service Unit of the Health Region of Lleida of the Catalan Health Service (CatSalut). with the following request:

"(...) I hereby request the traceability of access to my medical history, in accordance with the details in the corresponding request, attached to the present message in pdf format; I also have the right to request a copy of my existing Clinical History at the Arnau de Vilanova hospital in Lleida, as detailed in the corresponding request, attached hereto in pdf format.

For the purposes of proving my identity, I am attaching a copy of my ID. (...)"

It is noted that the reported person sent, as attachments, a copy of his ID, a request for access to the medical history ("Request HC") and a request for access to access traceability in the clinical history ("Request traceability of HC accesses").

- A copy of the form for the exercise of the right of access "(traceability)" dated (...)2023, for which he requested access to "ALL access to my medical history, which may to have been carried out from anywhere in Catalonia, from (...)2022 to (...)2023".

**5.** In this information phase, on 18/05/2023 the ICS was required to, in relation to the first request dated (...)2022, report on the reasons that would justify each and every one of accesses made, from the HUAV hospital center in Lleida, to the medical history of the reporting person during the days (...)2021, (...)2021, (...)2021, (...)2021, (...)2022 and (...)2022. Thus, to also report on the reasons and/or circumstances that would explain why the Territorial Management of Lleida of the ICS took "eight months" to respond to the first request made by the complainant. On the other hand, in relation to the second request dated (...)2023, the reported entity was required to report on the reasons that would explain that, on (...)2023, the Territorial Management of Lleida of the ICS asked the complainant to amend this second request and urged him to fill out a specific form, and what would be the legal basis that would support this request.

**6.** On 05/29/2023, the ICS requested an extension of the deadline of 10 days, which the APDCAT granted.

7. On 12/06/2023, the ICS responded to the request with a letter in which it stated the following:

- That "On (...)2022 Ms. (...) send via email a request for traceability, from (...)2020 to (...)2022, attaching the request and a copy of your ID."
- That "From the Citizen Service Unit, traceability is requested, on (...)2022, to the Manager of Files, Head of Technology and Systems Unit, who replied to us on (...)2022."
- That "Regarding the delay in responding was due to the fact that different people are involved in the process and there were situations that delayed the response to the request (problems with the encryption of e-Valisa, vacations, absence from work of the staff,...)."
- That "On date (...) an answer was given to Ms. (...) attaching the list of accesses to his medical history."
- That "On date (...) Ms. (...) presents a new request for clinical history which reaches us via CatSalut by email attaching your ID."
- That "His request was a request for a copy of the Clinical History but he also requested the traceability of the accesses and as we did on (...)2022 he was asked to fill out the established model to exercise the right of access (traceability), which was attached to you by mail. Ms. (...) he refused to make the request claiming that he had already provided it the first time he made the request."
- That "In the face of this new request, it was found that" the reporting person "did not have any episode of care, only one visit to the Emergency Service in 2005, so there was no access to his history from our Center ." (the Arnau de Vilanova Hospital in Lleida). In this sense, "This made us aware of the error that occurred when sending the response to the first traceability request."
- That "It is for this reason, that in the face of this error, on date (...), Mrs. (...) to apologize and inform him that he had no episodes of care in our Center, and that when reviewing the previous request for traceability, made in 2022, we found that there was an error and they sent the corresponding one to another person. This circumstance occurred because on (...)2022 we had 4 response emails from the File Manager who, being anonymous for reasons of confidentiality, caused the error in the response when attaching the traceability of another person (...)"

The reported entity attached various documentation to the letter.

- A copy of the email dated (...)2022, sent by the complainant to the Citizen Service Unit of the ICS of Lleida, by means of which he sent, attached, the form for the first request for the exercise of the right of access to the traceability of accesses to the clinical history.
- A copy of the form of this first request dated (...)2022, through which the reporting person requested "ALL access to my medical history from (...)2020 to (...)2022".

- A copy of the proof of delivery of the e-Valise sent on (...)2022, at (...)hours, from the Lleida Primary Unit - SC Lleida of the ICS to the HUAV hospital center in Lleida , through which he sent, attached, the request made by the person reporting on (...)2022.
- A copy of the e-Valisa sent on (...)2022, at (...)hours, from the HUAV hospital center in Lleida to the Primary Unit Lleida - SC Lleida of the ICS which, in relation with the request dated (...)2022 and referring to the person making the complaint, it indicated "This person has no medical history in Arnau", that is to say, in the HUAV hospital center in Lleida.
- A copy of the e-Valisa sent on (...)2022, at (...)hours, from the HUAV hospital center in Lleida to the aforementioned ICS unit. The document that was attached to it was the document "2022\_(...)\_Request", and it was the response of the ICS to another request for access to the traceability of access to the clinical history presented by another person
- A copy of the letter signed on (...)2023, through which the ICS responded to the complainant on the request dated (...)2022. And a copy of the record of access to the traceability of the clinical history that the ICS attached with its response. The content of this letter and the log of accesses has been transcribed in the 1st antecedent of this resolution. No data is observed that allows the identification of third parties other than the reporting person.
- A copy of the email sent on (...)2023 by CatSalut to the ICS, with the subject "Request traceability of access to my clinical history. Request a copy of the medical history", through which CatSalut forwarded to the ICS the second request submitted by the complainant, on (...)2023. It is noted that CatSalut only forwarded to the ICS the copies of the DNI of the person reporting and the document "Request HC", where the person reporting asked for a copy of their medical history "existing at the Arnau Hospital de Lleida", that is to say at the HUAV hospital center in Lleida.
- A copy of the email thread exchanged on (...)2023 and (...)2023 between the ICS and the reporting person, with the subject "Traceability", which includes the following messages:
  - Email dated (...)2023, through which the ICS required the reporting person to amend the request dated (...)2023, as follows: "(...) In response in your email we inform you that you must fill out the attached form to request traceability.(...)"
  - Email dated (...)2023, in which the complainant replied to the ICS as follows:

"(...) In response to your email from yesterday I have to say that, the document they are demanding from me to request the traceability of access to my data, from any center in Catalonia, among the data ( ... )2022 to (...)2023, I already attached them in my mail dated (...). I don't understand this maneuver. (...)"
- A copy of the email dated (...)2023, by which the ICS sent the complainant, among other things, a written response to the request dated (...)2023.

- A copy of the response letter dated (...)2023, signed by (...) of the Citizen Service Unit with the following response:

"(...) In response to your request for a copy of the medical history, we inform you that you have no open episodes in our Center, the only report that is on file is the year's emergency report 2005 which we attach.

On the other hand, with regard to traceability, seeing that you do not have open care episodes in our Center, we have reviewed the previous request for traceability, made last year, verifying that there was an error and we send the one that belonged to another person, because we received two traceables on the same day.

We regret the inconvenience we may have caused you and we apologize, at the same time we are attaching the emails where you can verify that you do not have a medical history in l'Arnau. (...)"

## **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 report, it is necessary to analyze the reported events that are the subject of this archiving decision.

### **2.1. On the eventual improper access to the medical history of the reporting person**

First of all, in his letter of complaint, the person making the complaint states that, on (...)2022, he requested from the ICS the traceability of access to the medical history and that, on (...) 2023, received, by post office, a letter of response from the ICS, and the copy of the access register to his medical history. Among other things, the person making the complaint complains that, contrary to the explanations given by the ICS in its response letter, where it indicated that all the accesses registered had been carried out for an assistance purpose, on none of the days linked to the accesses mentioned she had gone to the HUAV hospital center in Lleida . For this reason, he considered that it was improper access to his medical history.

Regarding this, in the response to the request for information, the ICS sets out the actions it carried out following the first request dated (...)2022, the results obtained and the specific circumstances that caused the ICS to end up giving the complainant an erroneous answer .

Well, on (...)2022, the Citizen Service Unit of the Territorial Management of the ICS of Lleida requested support from the Technologies and Systems Unit of the HUAV of Lleida, with the aim to respond to the first request dated (...)2022. On (...)2022, this unit replied to the ICS that the complainant "has no medical history in Arnau", that is, in the HUAV hospital center in Lleida. The ICS also states that on the same day (...)2022 received



information relating to "two traces", which had been requested by different people, and which contained anonymous information. This accumulation of responses in one day led to the fact that, eight months after the complainant's request, the ICS mistakenly sent the complainant another person's traceability, which he had received in relation to another access request.

The ICS states that it became aware of this error as a result of the checks it carried out to answer the second request made by the complainant, on (...)2023. From here, on (...)2023, the ICS called the complainant and sent him an email, to apologize and inform him of the error made in the response had delivered on (...)2023. Also, to explain to him that the person making the complaint did not have any episode of open care at the HUAV hospital center in Lleida, except for one visit to the emergency service in 2005.

From all that has been said, it must be considered that from the account of the facts presented by the ICS, as well as from the documentation provided by the parties, it can be inferred that there have been no improper accesses to the medical history of the reporting person, given that the ICS has recognized that the log of accesses that it handed over to the reporting person corresponds to the traceability of accesses to another person's medical history, which would explain why they were unknown to the reporting person. Also, the complainant has not made any complaint in relation to the information that the only record in the HUAV's medical history is a visit to the emergency department in 2005.

On the other hand, in relation to the communication of data that occurred by mistake, this Authority considers that, purely, it does not constitute a violation of the principle of data confidentiality, given that the data that the ICS communicated to the reporting person is anonymous data. Therefore, the person holding the access register cannot be directly identified.

Because of all this, in this case there is no element to prove that an infringement of the data protection regulations has been committed.

## **2.2** On the eventual neglect of the right of access exercised by the reporting person

In this section, it is necessary to analyze whether the ICS has disregarded the exercise of the right of access to the traceability of accesses to the medical history of the reporting person, in relation to the two requests for access presented.

- In relation to the first application dated (...)2022

As noted in the background, in his letter of complaint the complainant complains that, on (...)2022, he submitted to the ICS a first request for access, but until day (...)2023 did not receive a response.

In accordance with article 12.3 of the RGD, the ICS had to resolve and notify the request to exercise the requested right within a maximum period of one month, counting from the date of receipt of the request. However, the entity responded to the complainant on (...)2023, i.e. eight months later.

Regarding this, in the framework of the actions of prior information, the ICS adds that the delay in responding to the request dated (...)2022 was due to the fact that different people are involved in the process and situations that delayed the response to the

request coincided, such as problems with the encryption of e-Valisa, vacation periods and staff absences.

Well, certainly, it cannot be denied that the ICS gave an extemporaneous response to the reporting person, but the specific circumstances adduced by the reported entity must also be taken into account. Likewise, it should be emphasized that, despite the delay, the ICS has certified that the complainant responded and that, in the case of the second request submitted by the complainant ((... )2023), He was quick and diligent and responded within the expected time frame. The joint assessment of all these circumstances leads this Authority to consider that the facts reported are attributable to a one-off and exceptional management irregularity, which does not have enough entity to agree to initiate a sanctioning file.

Finally, as noted in the antecedents of this resolution, in his letter of complaint the complainant also referred to other issues relating to the first request dated (... )2022, which this Authority considers which are questions that have the nature of a claim for the protection of rights and, therefore, will be resolved in the specific procedure for the protection of rights (No. PT 51/2023). In the resolution issued as part of this guardianship procedure, apart from determining whether the data controller has incompletely attended to the request to exercise the right of access referred to, the qualification of if the request was resolved extemporaneously, as in this case.

Therefore, although in this archive resolution the extemporaneity of the response is not considered a sufficient element to consider that it is appropriate to initiate a sanctioning procedure, it should be noted that this issue is one of the sections on which this Authority will rule expressly in the resolution of the rights protection procedure opened following the complaint submitted by the complainant (PT 51/2023).

- In relation to the second request dated (... )2023

On the other hand, the complainant also stated that, on (... )2023, he submitted a second request, through which he requested access to the traceability of access to his clinical history, and a copy of your medical history at the HUAV hospital center in Lleida. The complainant complained because, on ( ... )2023, the ICS asked him to fill in the same form that the complainant had already sent them, attached, duly completed and signed.

From the information and documentation provided by the parties as part of this prior information, two issues should be noted.

First of all, it is proven that, on (... )2023, the reporting person sent an email to CatSalut ( and not to the ICS, which is the entity responsible for the treatment) , in which he explained his will to exercise the right of access to the traceability of accesses to your medical history and, also, the right of access to the copy of your medical history at the HUAV hospital center in Lleida. With this email, I attached the photocopy of your ID, the request for access to the traceability of accesses to your medical history and the request for access to the copy of my existing Clinical History in Hospital Arnau de Vilanova de Lleida.

Secondly, it has also been proven that, on (... )2023, CatSalut transferred to the ICS the aforementioned request dated (... )2023, given that the ICS was responsible for the



treatment and therefore it was up to him to answer it. However, for reasons unknown to this Authority, when CatSalut forwarded this request to the ICS, it did not attach one of the documents attached to it, specifically, the request for access to the traceability of accesses in the clinical history. That is why, on (...)2023, the ICS asked the reporting person to amend his request by filling out the specific form to request the traceability of accesses, given that he did not know the terms in which the person applicant had formulated his right of access.

Therefore, it should be considered that the request that the ICS made to the reporting person to fill in the form on the traceability of access to their medical history is motivated by a specific irregularity, which would also not fit into any type of violation of the regulations of data protection. In addition, this is a circumstance beyond the control of the data controller, who had not received this second request for access to traceability either from CatSalut or from the reporting person. In view of this, it is considered that the ICS, as the person responsible for the treatment, made a request to amend the request to the person making the complaint, given that he lacked the necessary information to be able to process it (art. 68 LPAC).

Finally, with regard to the request to exercise the right of access to the copy of the medical history of the reporting person at the HUAV hospital center in Lleida, it is certified that, on (...)2023, the ICS responded the reporting person. Therefore, this part of the petition received a specific response. In relation to this, in the event that the reporting person does not agree with the response received from the entity responsible for the treatment, he can submit a claim to the Authority.

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 previous information actions number IP 206/2023, relating to the Catalan Institute of Health (ICS), 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 Catalan Institute of Health (ICS) 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

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