

File identification Resolution of
sanctioning procedure no. PS 24/2018, referring to the Germans Trias i Pujol Hospital of the Catalan Health Institute.

Background

1.- On 03/03/2018, the Catalan Data Protection Authority received a letter from a person (identified in the preliminary information phase that preceded this procedure) in which he filed a complaint against the 'Germans Trias i Pujol Hospital (hereinafter, the hospital) of the Catalan Institute of Health (hereinafter, ICS), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant stated in his letter that he had suspicions that someone providing services at the hospital had unjustifiably accessed his medical history; suspicions caused because, as he indicated, certain medical information relating to his person had been provided in a judicial proceeding to which he was a party.

2.- The Authority opened a preliminary information phase (no. IP 137/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of 'application to the 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 could motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances that were involved.

3.- In this preliminary information phase, on 08/03/2018 the reported entity was required to comply with the following:

- Provide a copy of the record of access to the medical history of the reporting person for the period from 03/01/2016 to 03/01/2018. And, in relation to this register, identify the users who made each of the controversial accesses to the clinical history and report the position they held in the organization when the accesses occurred.
- Justify each of the accesses made to the medical history of the reporting person in the specified period.

4.- On 03/14/2018 the reporting person provided additional information regarding the reported event:

- He identified Dr. (...) (...), psychiatrist at the hospital, as the person who would have had unjustified access to his medical history.
- A copy of a log of access to a shared clinical history (HC3) was provided - according to the person denouncing the relative to his person- which would seem to be taken from the

"Lamevasalut" portal of the Department of Health (portal that the Department makes available to interested persons so that they can consult the accesses made to their HC3). This register contains four accesses to the clinical history carried out from the Hospital with the following details: • 11/12/2017 at 1:40 p.m. "Information consulted: Clinical Course Information

Integrated".

- Day 11/12/ 2017 at 1:40 p.m. "Information consulted: Clinical history information Summary".
- Day 11/12/2017 at 1:41 p.m. "Information consulted: Clinical course information integrated".
- Day 11/12/2017 at 1:41 p.m. "Information consulted: Information Clinical reports".

5.- On 03/14/2018, the Department of Health was required to provide a copy of the HC3 access log of the reporting person for the period from 03/10/2016 to 03/10/ 2018, in relation to the access made by people from the hospital who would have authorized access.

6.- On 03/20/2018 the ICS responded to the requirement mentioned in the 3rd precedent through a letter in which it stated that "an alleged unjustified access has been detected and a file has been opened "reserved information"

The reported entity attached various documentation to the letter, among other things a copy of the required access register, which shows two accesses made to the medical history of the reporting person by Dra. (...) (...) on 11/12/2017 at 13:38:06 hia at 13:38:54 h.

7.- On 28/03/2017 the Catalan Health Service (hereinafter, CatSalut) responded to the request mentioned in the 5th precedent through a letter in which a copy of the access register was provided required relative to the HC3 of the reporting person. This register contains identical information to that contained in the access register provided to this Authority by the complainant (4th precedent), with the additional information of the user who had made the controversial accesses, specifically, Dra. (...).

8.- On 06/06/2018 (reiterated on 07/04/2018) the ICS was required to report the result of the reserved information that, as it had reported (precedents 6th), the ICS had charged against Dra. (...) in relation to controversial access.

9.- On 07/25/2017 the ICS provided various documentation related to the access request made by the person here reporting to the ICS.

10.- On 27/07/2018, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Hospital Germans Trias i Pujol of the ICS for an alleged serious infringement provided for in the article 44.3.d), in relation to article 10 of the

LOPD. Likewise, he appointed Mrs. Eva M^a Garcia Garcia, an employee of the Catalan Data Protection Authority, as the person instructing the file.

11.- This initiation agreement was notified to the imputed entity on 07/31/2018.

12.- In the initiation agreement, the imputed entity was granted a period of 10 working days, accountants from the day after the notification, to formulate allegations and propose the practice of tests that they consider appropriate to defend their interests. This deadline has been exceeded and no objections have been made.

proven facts

Dr. (...) (...), who provides her services as a psychiatrist at the Germans Trias i Pujol Hospital of the Catalan Health Institute accessed, through the computerized program of clinical histories, in several occasions (detailed in precedent 4) in the medical history of the person reporting here, without these accesses being justified by any assistance or administrative action.

Fundamentals of law

1.- The provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), and article 15 of the Decree apply to this procedure 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, according to what it provides DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

As a preliminary consideration, it should be indicated that at the time this act was issued, the precept containing the infringing rate applied here has been repealed by Royal Decree-Law 5/2018, of 27/7, on urgent measures for the adaptation of Spanish law to the regulations of the European Union in the matter of data protection. But since it is a sanctioning procedure started before the validity of this rule - or in which the previous actions that had preceded it had started before -, it must be governed by the previous regulation (DT 1a RDL 5/2018).

Also, in this act, the eventual application to the present case of what is provided for in Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, regarding the protection of natural persons, has also been taken into account regarding the processing of personal data and the free movement thereof (RGPD). And as a result of this analysis, it is concluded that the eventual application of the RGPD would not alter the legal qualification that is made here, and specifically not

would favor the presumed person responsible for the infringement. In any case, it is worth saying that the facts imputed in application of the LOPD would also be so if the RGPD were applied to the case.

2.- In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement to initiate this procedure, this resolution should be issued without a previous resolution proposal, given that the accused entity has not made allegations in the initiation agreement.

This agreement contained a precise statement of the imputed liability.

3.- In relation to the facts described in the proven facts section, relating to the principle of confidentiality, it is necessary to refer to article 10 of the LOPD, which provides for the following:

"The person in charge of the file and those who intervene in any phase of the processing of personal data are obliged to professional secrecy with regard to the data and the duty to save them, obligations that remain even after the end of their relations with the holder of the file or, where applicable, with its manager".

Well, this Authority considers the fact described in the proven facts section to be duly accredited, consisting of the access by a person who provides services at the Hospital to the medical history of the person making the complaint here, without this access was justified for any welfare or administrative reason. In this regard, it should be noted that the health legislation, when it regulates the uses of the clinical history, in relation to health professionals only contemplates access by those who assist the patient or who are involved in his diagnosis (art. 11 Law 21/2000 and 16 Law 41/2002), a circumstance that would not occur here in the accesses referred to in the proven facts section, which therefore violated the principle of confidentiality, action which in turn is considered constitutive of the serious infringement provided for in article 44.3.d) of the LOPD, which typifies as such:

"The violation of the duty to keep secret about the processing of personal data referred to in article 10 of this Law."

4.- Article 21 of Law 32/2010, in line with article 46 of the LOPD, provides that when the offenses are committed by a public administration, the resolution declaring the commission of an offense must establish the measures to be taken so that the effects cease or are corrected. In this case, however, it is considered that it is not appropriate to require the adoption of any corrective measures, since it would be a matter of specific facts already accomplished.

On the other hand, it should be noted that article 21.2 of Law 32/2010, in accordance with the provisions of article 46.2 of the LOPD, foresees the possibility that the director of the Authority proposes the initiation of disciplinary actions, in accordance with what is established by the legislation in force on the disciplinary regime for staff in the service of public administrations. In

the case analyzed here is considered that the proposal of disciplinary actions is not appropriate to the extent that the ICS has informed this Authority (precedent 2nd) that at the time it opened a reserved information in relation to the facts that have given rise to this procedure.

resolution

For all this, I resolve:

- 1.- Declare that the Germans Trias i Pujol Hospital of the Catalan Institute of Health has committed a serious infringement provided for in article 44.3.d) in relation to article 10 of the LOPD.
- 2.- Notify this resolution to the Germans Trias i Pujol Hospital of the Catalan Institute of Health.
- 3.- Communicate this resolution to the Ombudsman and transfer it to him literally, as specified in the third agreement of the Collaboration Agreement between the Ombudsman of Catalonia and the Catalan Data Protection Agency, of date June 23, 2006.
- 4.- Order that this resolution be published on the Authority's website (www.apd.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, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with what they provide article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal 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, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)

Machine Translated