

## File identification

Resolution of sanctioning procedure no. PS 6/2019, referring to the Catalan Health Institute

## Background

1. On 10/08/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Catalan Institute of Health (hereinafter, ICS), on the grounds of an alleged breach of the regulations on Protection of personal data. In particular, the complainant stated that, through access to the "My Health" folder, he had seen up to four accesses to his medical history from a certain primary care center (hereafter, CAP ), on four dates that he indicated (31/01/2018, 05/02/2018, 20/02/2018 and 17/05/2018), which he considered unjustified. The complainant inferred that these accesses would have been carried out by a certain medical professional whom he identified by his first and last name. In this sense, he stated that since December 2017 this professional had not visited him, given that he requested the transfer of his file (from the Office of Medical Assistance and Prevention of Occupational Risks of the General Directorate of the Police of Department of the Interior – hereinafter, GAM–), to your family doctor.

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

2. The Authority opened a preliminary information phase (no. IP 242/2018), 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 they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 18/09/2018, the reported entity was required to specify which users had accessed the medical history of the reporting person, on the dates subject to the report; as well as in order to certify if these accesses were justified in the exercise of the functions of the user who had accessed them.

4. On 28/09/2018, the ICS responded to the aforementioned request through a letter in which it stated, among others, the following:

- That the medical professional referred to by the complainant is a specialist in medicine and provides his services attached to a certain police station of the Generalitat Police Force-Police Corps, by virtue of a management assignment between the Department of the Interior and the ICS (Resolution INT/2500/2016, of 27 October).

- That the claim of the person reporting is not true regarding the aforementioned medical professional not visiting him since December 2017, given that the process of Temporary Incapacity (hereafter, IT) of the person reporting is brought by his family doctor since 02/09/2018 and previously, the medical professional identified in the complaint had visited and delivered the confirmation notices of an IT process.

ÿ That on 01/31/2018, that medical professional accessed the section of the ECAP corresponding to the IT follow-up of the reporting person, according to the traceability of his medical history. According to the medical professional himself, on that date a broad request was received from the patient, via the ICS's internal wallet, in which he requested a copy of all his medical documentation held by the GAM.

This information was given to the complainant by means of a letter dated 02/06/2018. The records of access to the medical history of the reporting person [dated 31/01/2018 and 05/02/2018), correspond to the task of collecting documentation necessary to respond to the request of the reporting person.

- That on 02/20/2018 no access to the medical history of the complainant could be verified.

ÿ That with regard to the access to the clinical history by the said medical professional on 05/17/2018, according to this doctor, it corresponds to the need to respond to the complaint that the patient presented to the Authority , on 03/22/2018.

The reported entity attached various documentation to the letter.

5. On 04/10/2018 the complainant submitted a new letter indicating that the medical professional identified in his letter of complaint had treated him between 01/06/2017 and December 2017. The complainant pointed out that since the transfer of his file, that doctor had been accessing his medical history.

6. In this information phase, on 21/11/2018 the reported entity was again required to justify, among others, the access to the medical history of the reporting person that took place on 17 / 05/2018, given that in relation to the complaint made by the complainant on 03/22/2018 before this Authority against the General Directorate of the Police of the Department of the Interior (hereinafter, DGP) and the 'ICS (IP 93/2018 and 94/2018), until 20/06/2018 (DGP) and 18/09/2018 (ICS), this Authority did not require any information on the facts reported , nor was any action taken that involved revealing the existence of that complaint.

7. On 27/12/2018, the ICS responded to the above-mentioned request in writing in which it stated, among others, the following:

- That according to that doctor, this access was a matter of routine actions that this medical professional performs periodically at the GAM with all patients who have been out of work for more than a year. These cases are tried to be assessed a few days before the year of incapacity is completed, in order to prepare their appearance at the Catalan Institute of Medical Assessments (hereafter, ICAM).

- That the complainant's discharge was generated by the said doctor on 05/31/2017 and, therefore, it is a case that was about to complete the year of his incapacity situation.
- That although the follow-up of the leave was already carried out by another professional (since February), in the first instance, and until consulting his history, the medical professional could not have evidence.
- That in the GAM, this follow-up of long ITs is done personally by the doctor himself because there is no administrative staff.
- That the access registered on 05/15/2018 [it is inferred that this date is wrong and that the ICS refers to the access made on 05/17/2018] is exclusively in the patient's discharge notices.
  
- That it has been established with the computer services that in the case of the patients of the controversial medical professional, given that they are not assigned to a specific territory since the police may live in different towns, it is not possible to determine whether the patient is being visited by another doctor. This is an improvement that was introduced in July 2018 in the e-cap system.

8. On 06/03/2019, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the ICS for an alleged serious infringement provided for in article 44.3.h) in relation to article 9 LOPD. Likewise, Mr. (...), an official of the Catalan Data Protection Authority, was appointed as the person instructing the file.

9. This initiation agreement was notified to the imputed entity on 03/12/2019.

10. The initiation agreement explained the reasons why no charge was made with respect to other reported events. In particular, with respect to specific accesses to the medical history of the reporting person, given that these were considered to be justified.

11. The deadline has been exceeded and no objections have been submitted.

proven facts

Of all the actions taken in this procedure, the facts detailed below are considered accredited.

On 05/17/2018, a certain medical professional from the ICS accessed the medical history of the complainant, to assess the situation of the complainant (who had been his patient) a few days before the year in a situation of incapacity, in order to prepare his appearance at the ICAM.

However, this medical professional had stopped treating the complainant since 09/02/2018, as indicated by the ICS itself.

In the case of GAM patients (Generalitat Police officers-Mossos d'Esquadra), the ICS information system (e-cap) did not allow to determine whether the patient was treated by another medical professional of the ICS, since these were not assigned to a specific territory. Given the above, until the patient's medical history was accessed, there was no record of this fact.

This incident has been resolved since July 2018, as indicated by the ICS.

#### Fundamentals of law

1. The provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (from now on, LPAC), are applicable to this procedure, and article 15 of Decree 278/1993, of November 9, on the sanctioning procedure for application to the areas of competence of the Generalitat, according to what is provided for in DT 2a of Law 32/2010, of 1 October, from 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.

2. In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating 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.

3. In relation to the facts described in the proven facts section, relating to data security, it is necessary to refer to article 9 of the LOPD, which provides for the following:

"1. The person in charge of the file and, where applicable, the person in charge of the treatment must adopt the necessary technical and organizational measures to guarantee the security of the personal data and avoid their alteration, loss, treatment or unauthorized access, taking into account the state of technology, the nature of the data stored and the risks to which they are exposed, whether they come from human action or the physical or natural environment.

2. Personal data must not be recorded in files that do not meet the conditions determined by regulation in relation to their integrity and security and those of treatment centers, premises, equipment, systems and programs.

3. The requirements and conditions that must be met by the files and the people involved in the processing of the data referred to in article 7 of this Law must be established by regulation.

This regulatory development with regard to the security measures to be adopted, has been carried out through Royal Decree 1720/2007, of December 21, which approves the Regulations for the deployment of the LOPD (hereinafter, RLOPD), and specifically with its Title VIII. Well, with respect to the behaviors described in the facts section

motivates the initiation of the procedure, it is inferred that the accused entity violated the security measure provided for in article 91 of the RLOPD, a provision that regulates access control in the following terms:

"1. Users must have access only to the resources they need to perform their duties."

During the processing of this procedure, the situation described in the imputed facts section, by virtue of which ICS professionals were able to access the clinical history of patients they were not responsible for, has been duly proven, which it is considered that is constitutive of the serious infringement provided for in article 44.3.h) of the LOPD, which typifies as such:

"h) Maintain files, premises, programs or equipment that contain personal data without the proper security conditions determined by regulation."

In the present case, it is considered that the configuration of the e-cap before July 2018 allowed the medical professional of the GAM to access, without being necessary for the exercise of his duties, the medical history of patients (police officers of the Generalitat-Mossos d'Esquadra) that he no longer cared for, although he had no record of this fact until the medical history was consulted.

On the other hand, article 26 of Law 40/2015, of October 1, on the legal regime of the public sector provides for the application of the sanctioning provisions in force at the time the events occurred, except that the subsequent modification of these provisions favor the alleged infringer. That is why, in this act, the eventual application to the present case of the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (RGPD), which became fully applicable to after the facts that are declared here as constituting an infringement. And as a result of this analysis, it is concluded that the eventual application of the RGPD would not alter the legal classification that is made here, and specifically would not favor the person responsible for the infringement.

4. Article 21 of Law 32/2010, in line with article 46 of the LOPD, provides that when the infractions are committed by a public administration, the resolution declaring the commission of an infraction must establish the measures to be taken so that the effects cease or are corrected. In the present case, however, no corrective measure should be required from the ICS given that, as indicated in the proven facts section, the incident causing the irregular situation that is the subject of the present sanctioning procedure was resolved on month of July 2018.

resolution

For all this, I resolve:

1. Declare that the Catalan Institute of Health has committed a serious infringement provided for in article 44.3.h) in relation to article 9, both of the LOPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the ICS.

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, dated June 23, 2006.

4. Order that this resolution be published on the Authority's website ([www.apd.cat](http://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,