

File identification

Resolution of sanctioning procedure no. PS 37/2019, referring to the Consorci Sanitari del Maresme

Background

1. On 15/12/2018, 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 the protection of personal data. Specifically, the complainant complained about unjustified access to his medical history included in ICS files, access which - always according to the complainant - would have occurred in the following context:

- On (...)/2018 he went to the Laboratorios (...) center at 8:00 a.m. to have an intolerance test (...), the result of which was provided by said laboratory at 12:30 p.m. on the same day.
- At 18:09 that same day, he received a call "from the phone (...)", from a technician from Laboratorios (...), who explained to him, in the words of the same person making the complaint, the following: "that there was a problem during the performance of the test, and that is that one of the technicians who gave me the hydrogen measuring device did it without gloves, jumping know the protocol At first I understood that the test had to be repeated (...) after a while, the person asked me if I could go to the laboratory at some point to do some blood tests to check "that everything was good". And him I ask what the blood tests have to do with the (...) test I had done in the morning. Mrs.(...) tells me that "having seen in my request from the doctor that I was HIV positive, they have accessed my history from the Catalan Institute of Health, to check the data and that for this reason, if I didn't feel sorry, and for the peace of mind of the worker who did the test, I would stop by the laboratory to do some tests."

2. The Authority opened a preliminary information phase (no. IP 353/2018), 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, the Catalan Health Service (CatSalut) was required - entity that manages the shared clinical history HC3- and the ICS so that they report on eventual access on (...)/2018 to the HC3 and to the medical history of the reporting person contained in the ICS files, respectively. Likewise, they were required so that, if any access had occurred, they would justify the reasons for it.

In this regard, both CatSalut and the ICS reported that there was no access to the medical history of the person reporting the day in question in their respective records.

4. On 11/02/2019, Laboratorios (...) was required to provide the following documentation and/or information:

- Provide evidence of the Laboratorios technique (...) identified by the person making the complaint, so that the latter confirms, denies or specifies the statements made by the person making the complaint in relation to possible access by Laboratorios (...) in the ICS clinical history file.
- Indicate whether Laboratorios (...) had access to the clinical history file managed by the ICS, or to the HC3 file, managed by the Department of Health of the Generalitat de Catalunya.

5. On 02/19/2019, Laboratorios (...) responded to this request by means of a letter stating the following:

- "(...) as the affected person says, there was no contact with the professional during the test, but there was contact with the affected person's saliva, which is why the protocol was activated of LABORATORY (...) occupational risk prevention accident, given that the contact was on non-intact skin. The protocol provides that, if the source is known, the patient must be contacted in order to request the performance of an analysis that includes the determinations of hepatitis B, hepatitis C and HIV. This protocol is activated whenever this occurs with the aim of protecting the worker"
- "LABORATORY (...) had the information of part of the clinical history of the affected person since the doctor requesting the test included in the request that he was being treated for HIV; (...) this is an independent fact given that without this information the action would have been the same."
- "(...) LABORATORY (...) did not access, at any time, the clinical history of the ICS of the affected person (...)"
- "(...) LABORATORIES (...) has not had and does not have any type of authorization to access any clinical history of the ICS or the Department of Health of the Generalitat".

LABORATORIES (...) accompanied the response letter with a copy of the "request for referral / clinical interconsultation" issued on (...)/2018 by the Outpatient Center of Specialties (...), from Consorci Sanitari del Maresme (hereinafter, CSM), in which it contained a list of medical history with the following verbatim:

(...)
(...)
(...)
(...)
(...)"

6. In view of the content of the "request for referral / clinical interconsultation", issued by the CSM, on 07/18/2019 the said entity was required to report the following:

- Inform in detail about the purpose of issuing the "referral request / clinical interconsultation" document, as well as the circuit that this document would follow.
Confirm that one of the purposes is for the patient to be able to show it to the service where the test requested is to be carried out, in this case, Laboratorios (...).
- Set out the reasons for the inclusion in the aforementioned referral request to undergo an "intolerance test (...)" in the case of the person making the complaint, of each and every medical history that is include; indicating, if applicable, the need to include such an antecedent in view of the specific test requested, with respect to each and every one of the antecedents contained there..

7. On 07/31/2019, the CSM responded to the aforementioned request in writing in which it set out the following:

- That "the document is a request for a test issued from the Outpatient Center of Medical Specialties of (...), managed by the Consorci Sanitari del Maresme. The request is made electronically from the "eCAP" software, standard software for almost all primary care in Catalonia and many of the medical specialty centers, as is the case.

The document is drawn up by the intervening professional, in this case a specialist doctor from the (...) team, using the eCAP tool and completing the necessary fields to prepare the application according to their clinical criteria; once completed this document is registered in the system.

A printout of the document is given to the patient so that he can show it to the service where the test is to be carried out, in this case the test is carried out in the Laboratory of the Hospital of (...). (...)

From the Consorci Sanitari del Maresme, this type of test (intolerance test (...)) is not derived from Laboratories (...)

What we have found is that the patient, in this case, did not go to the Laboratory of the Hospital of (...) to take this test. Everything points to the fact that if it was done in Laboratorio (...) it was a voluntary decision".

- That "the information is not incorporated [in the "referral request / clinical interconsultation"], automatically by the care management program (eCAP) but has been incorporated by the intervening professional".
- That the information included in the referral request relating to the current illness and the diagnostic orientation (from "depositions" to "probable IBS-E") "may be consistent with having been provided to carry out the intolerance test (...), even for the purposes of determining the type of test to be performed within the different options available with this objective."

- That, "having said the above, the incorporation of the antecedents, as well as the Action Plan, does not seem to be fully justified, even in a case like this in which the document did not have to leave the scope of the Consortium Maresme Sanitarium".
- That the incorporation of the information that has been identified as "potentially unnecessary in the referral sheet, can be explained by an accidental confusion of the professional, an error in treating this referral sheet as a referral sheet to another professional (interconsultation)".
- That, "it must be said, however, that this is not a document that is drawn up in order to communicate it to entities outside the Maresme Health Consortium, and therefore, it is made thinking that it will be viewed by laboratory staff of the own Hospital of (...)".
- That, "from the Consorci Sanitari del Maresme, faced with this request for information from the APDCAT, we have initiated the adoption of specific informational measures aimed at professionals in relation to how to complete the Referral Request forms; is expected that once the informative actions have been carried out, this will be an item that will be incorporated into the institution's good practices document".

8. In view of the investigations carried out, on 11/11/2019 a decision was issued to archive the previous information no. IP 353/2018 with regard to the ICS, since in the framework of said prior information it was not proven that the ICS had violated the data protection regulations.

On the other hand, on that same date, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the CSM for an alleged infringement provided for in article 83.5.a), in relation to the article 5.1.c); both 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 movement thereof (hereinafter, RGPD) .

This initiation agreement was notified to the CSM on 11/19/2019.

9. In the initiation agreement, the accused entity was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend their interests.

10. On 04/12/2019, the CSM presented a letter in which it acknowledges its responsibility for the alleged facts, and expressly requests that "the case proceed directly to the resolution phase, making the proposal procedure unnecessary resolution".

In this same letter, the CSM informed this Authority that, following the initiation of this procedure, two specific actions had been carried out within its organization:

- "A specific communication has been reported through the corporate channels to the medical professionals of the organization, (...), in which the need to be

particularly careful with the principle of data minimization, and in this sense insist that when completing requests for evidence they must decide which are the pertinent, adequate and not excessive data that must be known to the professionals who have to carry them to term (...).

- "It has been added to the Good Employee Practices document, which is applicable to all professionals in the organization: "All professionals must keep in mind the principle of data minimization, only use them strictly relevant, adequate and not excessive for the case at hand (...), for example, in the face of the need to request complementary examinations, (...) especially avoiding giving information about the patient's pathological history if these are not relevant for carrying out the consultation or exploration that is requested".

proven facts

On (...) /2018, the CSM issued and delivered to the person making the complaint, the document "Request for referral / Clinical interconsultation", with the purpose of having the test consisting of an "intolerance test (...)". This request, which is transcribed verbatim in the 5th antecedent in fine, contained a collection of medical antecedents that were absolutely necessary to be able to practice the aforementioned test (specifically, the contents of the paragraph from "(.. .)/2018" until "without being effective" and the data collected in the "PLAN (...) "We will try (...)").

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of 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.

2. In accordance with article 85.1 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 imputed entity has acknowledged its responsibility and that implies the termination of the procedure.

3. In relation to the facts described in the proven facts section, relating to the principle of data minimization, it is necessary to refer to article 5.1.c) of the RGPD, which provides that "Personal data will be (...) c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("minimization of data")."

During the processing of this procedure, the fact described in the proven facts section, which constitutes the offense provided for in article 83.5.a) of the RGPD, which typifies as an offense the violation of the "basic principles for treatment

(...)", in this case, of the principle of data minimization contained in article 5.1.c) of the RGPD transcribed above.

4. Article 83.7 of the RGPD provides that each Member State may establish rules on whether administrative fines can be imposed on authorities and public bodies, without prejudice to the corrective powers of the control authority under art. 58.2 of the GDPR. And adds article 84.1 of the RGPD that the member states must establish the rules regarding other sanctions applicable to the violations of this Regulation, in particular those that are not sanctioned with administrative fines in accordance with article 83.

In this regard, article 21.2 of Law 32/2010 determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

In this same sense, the art. 46 of the LOPD (valid until the entry into force of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights -LOPDGDD-), provided that in the case of infringements committed by the public administrations, in the resolution in which the infringement is declared, the measures to be taken must be established so that the effects of the infringement cease or are corrected.

This provision is similar to that of article 77 of the LOPDGDD.

In the present case, given the concurrent circumstances, it is not considered appropriate to require the adoption of corrective measures by the CSM, since, on the one hand, the facts that are sanctioned here are due to an accidental confusion by a professional; and, on the other hand, the CSM has informed this Authority of having carried out informative actions to prevent events such as those that led to the initiation of this procedure from being repeated.

resolution

For all this, I resolve:

1. Admonish the Consorci Sanitari del Maresme as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), both of the RGPD.

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 Consorci Sanitari del Maresme.
3. Communicate the resolution issued to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
4. Order that this 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, 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 count from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating 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,