

**File identification**

Resolution of sanctioning procedure no. PS 21/2022, referring to the Catalan Health Institute (CAP Miami Platja)

**Background**

1. 19/10/2021 , the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Catalan Institute of Health (ICS) - CAP Miami Platja -, on the grounds of an alleged breach of the regulations on the protection of personal data . The complainant stated the following:

1.1 That a doctor from CAP Miami Platja made an urgent assistance report (to which the complainant accessed through "La meva Salut") which contained his data (names, surnames, date of birth, CIP), when she had never gone to the aforementioned CAP.

1.2 That apart from recording in your shared medical history (HC3) a report of emergency care that was never provided to you but which contains your data, this report would have been given to the person who would have actually received it the aforementioned assistance, who would have thus had knowledge of their data.

In order to substantiate the facts reported, the reporting person provided the reported urgent assistance report.

2. The Authority opened a preliminary information phase (no. IP 423/2021), 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 01/25/2022 the reported entity was required to report on:

- The procedure by which the Primary Care Centers in general, and the CAP Miami Platja in particular, include in each patient's HC3 (and which he/she can view through the "My Health" portal), the emergency assistance reports. If this procedure is contained in a protocol, the contribution thereof.
- Explanation regarding the reporting person's HC3 including the document subject to the complaint.
- Confirmation regarding whether a copy of the report was given to the person who actually received urgent assistance at the CAP Miami Platja.

4. On 02/25/2022, given that the 10-day period granted to comply with the information request had been exceeded by far, the request was reiterated and a new period of 5 days was granted to provide response to said request.

5. On 11/03/2022, the ICS responded to the aforementioned request in writing by means of which it provided a report signed by the coordinator of Citizen Care of the Directorate of Primary Care Camp de Tarragona together with a consistent document in a technical

protocol called "Publishing CUAP reports in HC3". In response to the information requested, the following was set out:

- That a document consisting of a technical protocol is attached that includes a technical description of the procedure that is executed for the publication of urgent assistance reports at the time of closing the report.
- That given the potential urgency and that the patient identified herself with a document that was not the individual health card (TSI) and that, therefore, was not passed through the card reader, they considered that an error had occurred in the user identification procedure.
- That they intend to review the circuit and proceed with its improvement to prevent further incidents from occurring.
- Likewise, it is confirmed that the health care report was delivered to the users treated.

6. On 04/20/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Catalan Institute of Health (CAP Miami Platja) for two alleged violations provided for in article 83.5 .a), one in relation to article 5.1.d) and another in relation to article 5.1.f); all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD). Likewise, he appointed Mrs. (...), an official of the Catalan Data Protection Authority, as the person instructing the file. This initiation agreement was notified to the imputed entity on 04/21/2022.

In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests.

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

### **proven facts**

1. On (...), a doctor from CAP Miami Platja erroneously linked an urgent assistance report to the personal data of the person making the complaint and this fact led to the report being uploaded to the HC3 of the person making the complaint , which had not gone to the said medical center to be assisted urgently.

2. This report was given to a third person, a user of CAP Miami Platja who was treated urgently on (...) and, as a result, she accessed various personal data of the reporting person.

### **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 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. This agreement contained a precise statement of the imputed liability.

**3.** In relation to the fact described in point 1 of proven facts, relating to the principle of accuracy, it is necessary to go to article 5.1.d) of the RGPD, which provides that the personal data will be "*accurate and, if outside necessary, updated; all reasonable measures will be taken to eliminate or rectify sin data delay \_ personal that they are inaccurate with respect to the purposes for which they are treated (<<accuracy>>*".

During the processing of the preliminary information phase, the fact described in point 1 of the proven facts section has been duly proven by having recognized, the reported entity, that an error occurred in the identification procedure that led to link the personal data of the complainant here to a report of an emergency assistance to a third person.

This fact is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies as such the violation of "*a) the principles básicos para el tratamiento, including the conditions for consent to the tenor of articles 5, 6, 7 and 9*" among which is the principle of accuracy.

The conduct addressed here has been included as a very serious infringement in article 72.1.a) of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD), in the following form: "*b) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679*".

**4.** In relation to the fact described in point 2 of proven facts, relating to the principle of confidentiality, it is necessary to go to article 5.1.f) of the RGPD, which provides that: "*1. The data personal data will be: (...) f) Treated in such a way as to guarantee security data adequacy \_ personal, including the protection against unauthorized or illegal treatment and against it loss, destruction or accidental damage, through the application of measures appropriate technical or organizational techniques ( " integrity and confidentiality ")*".

This fact is also duly accredited, given that the reported entity also acknowledged that the report with the reporting person's data had been given to the third person who was assisted urgently.

On the other hand, article 5 of the LOPDGDD, relating to the duty of confidentiality, establishes the following: "*1. Those responsible and in charge of data processing as well as all the people who intervene in any phase thereof are subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679. 2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with its applicable regulations (...)*".

In accordance with what has been explained, the fact recorded in point 2 of the section on proven facts constitutes the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of "*The principles basics for treatment including the conditions for consent to the tenor of articles 5, 6, 7 and 9*", among which the principle of confidentiality is at the forefront.

In turn, this conduct has been recorded as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form: *"The violation of the principle of confidentiality established in article 5 of this organic law ."*

**5.** At this point it is not superfluous to add that, in accordance with the system of responsibility provided for in the RGPD and, in particular, in article 70 of the LOPDGDD, the responsibility for the commission of the imputed offenses falls on the person responsible for treatment. Specifically, the aforementioned article 70 of the LOPDGDD establishes that: *"Responsible subjects. 1. They are subject to the sanctioning regime established by Regulation (EU) 2016/679 and this Organic Law: a) Those responsible for the treatments."*

So things are, in accordance with the liability regime provided for in the data protection regulations and from the point of view of the right to the protection of personal data, the person responsible for the facts that are considered proven is the ICS, given the his status as responsible for the processing in relation to which the offenses alleged here have been committed.

**6.** Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

*"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected. The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."*

And section 3 of art. 77 LOPDGDD, establishes that:

*"3. Without prejudice to what is established in the previous section, the data protection authority must also propose the initiation of disciplinary actions when there are sufficient indications to do so. In this case, the procedure and the sanctions that must be applied are those established by the legislation on the disciplinary or sanctioning regime that is applicable. Also, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for the treatment that have not been properly attended to is proven, in the resolution in which the penalty is imposed, to include a warning with the name of the responsible position and it must be ordered to be published in the "Official Gazette of the State" or the corresponding regional newspaper."*

In terms similar to the LOPDGDD, 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 the present case, the ICS should not be required to adopt corrective measures in order to correct the effects of the infringements, since these are facts already accomplished and, in

addition, the ICS has informed the intention to review the circuit and proceed with its improvement to prevent incidents like the one that happened in the present case from happening again.

For all this, I resolve:

**1.** Admonish the Catalan Institute of Health as responsible for two infringements: an infringement provided for in article 83.5.a) in relation to article 5.1.d); and another violation provided for in article 83.5.a) in relation to article 5.1.f), all of them 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 legal basis 6.

**2.** Notify this resolution to the Catalan Health Institute.

**3.** Communicate the resolution 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 the provisions of 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,