

File identification

Resolution of sanctioning procedure no. PS 50/2022, referring to the Primary Care Service (SAP) Delta del Llobregat of the Catalan Health Institute

Background

1. On 05/05/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Delta del Llobregat Primary Care Service (SAP) of the Catalan Institute of Health (hereafter SAP Delta del Llobregat), due to an alleged breach of the regulations on personal data protection .

The complainant stated that on (...) /2021 a group of workers from the EAP Bellvitge (located at CAP Bellvitge) sent a letter to the (...) of SAP-Delta Llobregat in which they expressed his discomfort with (...) from EAP Bellvitge ((...)). At the end of said written work, the workers identified themselves with their first and last name, ID number and handwritten signature. In relation to this letter, the group of workers met with the (...) of the SAP-Delta Llobregat to discuss the matter, and in this meeting, the workers expressly requested "the need to guarantee *the anonymity of the people who signed the complaint*" regarding (...) the EAP Bellvitge, for fear of labor reprisals. However, (...) of the Bellvitge EAP had access to the referenced letter-complaint dated (...) /2021 with the personal data of the signatories exposed, as can be inferred from the email with the subject "Letter", dated (...) /2021, which (...) of the said EAP addressed to various email addresses corresponding to health professionals of the medical center, with which he attached the referenced letter dated (...) /2021.

The complainant provided as documentation a copy of the letter of complaint dated (...) /2021, which includes the names and surnames, ID number and handwritten signature of the various workers, and a copy of the email dated (...) /2021 that the person who held the position (...) of the EAP Bellvitge sent to several people.

2. The Authority opened a preliminary information phase (no. IP 195/2021), 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 whether the (...) of SAP-Delta de Llobregat maintained any contact with the workers of CAP Bellvitge to discuss the subject matter of the letter-complaint dated (...) /2021, and in such case, if during the meeting the request was made to maintain the confidentiality of the identification data of the signatories of the written complaint. Likewise, it was requested that information be given on whether the letter-complaint dated (...) /2021, including the data of the people signing the open, was sent from the SAP-Delta Llobregat to (...) of the EAP-CAP Bellvitge, and in such a case, the reasons why the letter with the data of the people who signed in the open would have been sent. In the last one, it was required that, in relation to the e-mail with the subject "Letter", sent on date (...) /2021, information should be given on

the position and job functions/categories held by the persons email recipients. Also, on what grounds would justify the sending of said mail attaching the written complaint dated (...)/2021, signed by several workers identified by first and last name and ID.

4. On 01/25/20222, the Llobregat SAP Delta of the ICS responded to the aforementioned request in writing in which, among others, it stated the following:

- That " *the said letter of complaint was formalized by means of a letter signed by several professionals of the EAP Bellvitge, which did not contain any specific request for confidentiality of data. In addition, when the entry of the document was carried out at the SAP Delta Secretariat, there was also no verbal expression of the voluntariness of not including the identifying data of the complaining professionals.*"
- That " *prior to this way of delivering the written claim, addressed to the (...) of SAP Delta, the interested parties held a face-to-face meeting with (...) at the (...) of the Service, (...), in order to set out the facts and state that they would present a letter later, communicating at that time the request for anonymity informally. In this meeting, (...) at the (...) of SAP Delta informed the interested parties that the claim would follow its course with the aim of finding a satisfactory solution for the professionals in relation to their discomfort with (...) from CAP Bellvitge.*"
- That " *the transfer of information, regarding the confidentiality request of the affected professionals, from (...), (...) to the (...) of SAP Delta, to myself, (...), (...) of SAP Delta, given the volume of existing commitments on said dates due to the pandemic, it was not effective with the detention that the matter required and that the express message requesting confidentiality was not enough clarified, by completely involuntary omission.*"
- That " *given the lack of knowledge of this request for confidentiality on the part of the plaintiff professionals, and faced with the responsibility of addressing the conflict, I saw the need to inform the doctor (...), at that time (...) of the EAP Bellvitge (until (...)/2021), the letter of claim. And that for this reason, dated (...) of 2021, I sent by email, solely to Dr. (...), the complaint of the professionals, in order to confront the problem, and to look for solutions and proposals for joint improvements, and never with the will to rebel against the identity of the professionals leaving them in a context of helplessness and reprisals, which, by the way, never came to be.*"
- That " *at the time (...) at the (...) of the EAP Bellvitge (until 31/07/2021), the professional states that she sent the email to the nursing team at CAP Bellvitge with the aim of finding a joint solution to the problem and that at no time was he aware either verbally or in writing of the will of the signatories to maintain their anonymity.*"
- That " *we detail, below, the position and the functions/categories of the professionals addressed in the email sent by the then, (...) of (...) of the EAP Bellvitge, (...), on date (...) of 2021. As for the position, it is entirely members of the nursing team of CAP Bellvitge itself .*"

In this regard, it should be noted that the people from the nursing team identified by the organization as the recipients of the email sent by (...) from EAP Bellvitge on (...)/2021, do

not match in its entirety with the people who made up the group of workers identified in the letter of complaint.

5. On 31/08/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Delta del Llobregat Primary Care Service (SAP) of the ICS for two alleged violations: one violation provided for in article 83.5.b) in relation to article 12; and another violation provided for in article 83.5.a) 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). This initiation agreement was notified to the imputed entity on 09/02/2022.

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. The (...) of the SAP Delta del Llobregat did not take into account the opposition formulated by a group of workers from the EAP Bellvitge not to be identified as signatories of a complaint presented against (...) of the EAP Bellvitge, although this request had been raised during the meeting that, on an uncertain date but close to (...)/2021, was held between the workers and (...) of the SAP Delta del Llobregat (as recognized by the reported entity).

This fact led to the fact that, on (...)/2021, the (...) of SAP Delta del Llobregat sent an email to (...) of EAP Bellvitge, in which he attached the letter of complaint with the details of the workers who signed the open letter (name and surname, ID number and handwritten signature).

2. The person (...)aa (...) of the EAP Bellvitge, on date (...)/2021, sent an email, with the subject "Letter", to different people from the 'nursing team of the entity, in which he attached the letter of complaint that a group of workers from the EAP Bellvitge had presented, days before, to the (...) of SAP Delta del Llobregat, to show his discomfort with (...) of said EAP. In said letter of complaint, the workers who signed the complaint were identified through their first and last names, ID number and handwritten signature.

The recipients of said e-mail, of whom only some were signatories to the letter of complaint, were able to know the referenced personal data of the workers contained in the attached letter of complaint, without any reason that could justify this communication of personal data.

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 point 1 of the proven facts section, it should be noted that, after a more thorough analysis of the facts described in this section, a change in the pronouncement on the imputation of responsibility for the entity denounced in the agreement to initiate this sanctioning procedure.

In this respect, the initiation agreement states, as one of the constitutive facts of a possible infringement typified in the articles 83.5.b) and art. 12 RGPD, that SAP Delta del Llobregat did not attend to the opposition formulated by the workers who signed the complaint, if they were not identified before (...) of EAP Bellvitge.

Well, about this, although it is true that, as stated in the initiation agreement, the opposition formulated by the workers was not taken into account by the reported entity, a more detailed analysis of the circumstances concurrent in this specific fact, in particular, the way in which said opposition was formulated, leads to conclude the difficult fit of this request in a procedure for requesting the exercise of a right of opposition provided for in the RGPD , since the established procedure was not followed.

In this sense, it should be noted that, in the letter of complaint submitted by the workers against (...) of the EAP Bellvitge, there is no request for confidentiality of the identity of the signatories, nor any mention that allows to infer the formal exercise of the right of opposition in relation to these personal data. There is also no evidence that after the presentation of the referred letter of complaint, the said workers presented any other formal request not to be identified before (...) the EAP Bellvitge. Therefore, despite not questioning that the request for confidentiality of the workers' data was made verbally, as the reported entity has also recognized, the fact is that this request was made without following the established channels for that purpose. This fact could lead to the request not being taken into account by the SAP Delta del Llobregat person who finally sent the email to (...) of the Bellvitge EAP, in which he attached the controversial letter of complaint with the data of the signed workers exposed.

In relation to this, it should be noted that the provisions of article 25 of Royal Decree 1720/2007, of 21 December, which approves the Regulation for the development of the LOPD (in force insofar as it is not opposed to the RGPD), and article 66 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, lead to the inference that a request for the exercise of a right of opposition must be presented in writing (eg: they say it must be signed, copy of ID, etc.). So things are, in the present case, the non-processing of the request to exercise the right of opposition in the legally established terms, would prevent imputing to the ICS the responsibility of the commission of the infringement consisting in the non - attendance to a request to exercise the right of opposition of the group of workers, when this request was not formulated following the established regulatory procedure.

Otherwise, it should be borne in mind that the disclosure of the identity of the workers who signed the complaint to the people against whom it was directed, in this case (...), could be necessary so that the entity could resolve the complaint formulated, this being a valid reason

for having rejected the opposition of the signatories of the complaint to reveal their identity to these specific people.

In short, in view of the specific circumstances of the case analyzed here, it is not possible to sustain the imputation initially formulated against the ICS, with regard to the facts described in point 1 of the section on proven facts, in accordance with article 20.1.a) of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat of Catalonia.

2. With regard to the fact described in point 2 of the proven facts section, it is necessary to refer to article 5.1.f) of the RGPD, which provides for the following:

" 1. The personal data will be:

(...)

f) processed in such a way as to guarantee adequate security for personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical and organizational measures ("integrity and confidentiality")."

This principle of integrity and confidentiality provided for by the RGPD must be complemented with the duty of secrecy contained in Article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), which establishes the following:

"Article 5. Duty of confidentiality

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 the applicable regulations.

3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or person in charge of the treatment has ended .

Likewise, it is appropriate to mention article 13 of the LPAC, which lists a catalog of rights of people in their relations with public administrations, in which the right "To the protection of personal data, and in particular the security and confidentiality of the data contained in the files, systems and applications of public administrations" .

In accordance with what has been stated, the fact collected in point 2 of the section on proven facts constitutes the infringement provided for in article 83.5.a) of the RGPD, which typifies as such the violation of the " *basic principles for treatment (...)*", in relation to article 5.1.f) of the same RGPD.

In turn, this conduct that is addressed here has been collected as a very serious infraction in article 72.1.i) of the LOPDGDD , in the following form: "*i) The violation of the duty of confidentiality established by the "article 5 of this Organic Law."*

3. 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."

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 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 the present case, however, it becomes unnecessary to require corrective measures for the effects of the infringement given that the infringing behavior refers to an already accomplished fact and that by its nature cannot be corrected with the implementation of corrective measures.

For all this, I resolve:

1. Admonish the Primary Care Service (SAP) Delta del Llobregat of the ICS as responsible for an infringement 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 5th legal basis.

2. Notify this resolution to Delta del Llobregat Primary Care Service (SAP) of the ICS

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,

Machine Translation