File identification

Resolution of sanctioning procedure no. PS 16/2023, referring to the General Sub-Directorate of Medical Assessments of the Department of Health (Catalan Institute of Medical Assessments)

Background

1. On 01/10/2021, the Catalan Data Protection Authority received a letter of complaint against the General Sub-Directorate of Medical Assessments of the Department of Health (Catalan Institute of Medical Assessments "ICAM"), with reason for an alleged breach of the regulations on the protection of personal data .

The complainant complained about the fact that, in the framework of a permanent disability (PI) procedure initiated following his request, an ICAM medical assessor issued a medical opinion, on 05/14/2021 , which included data related to his health that had nothing to do with the pathology that prompted his IP request. Thus, the complainant based his IP request on certain "chronic back injuries, with 2 surgical interventions; as well as both feet, also with a history of surgery and corneal pathology". The opinion issued by the ICAM contained medical information about a gynecological pathology which, according to the complainant, "has no interest in the IP file."

The complainant provided a copy of the disputed medical opinion.

2. The Authority opened a preliminary information phase (no. IP 385/2021), 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.

3. In this information phase, on 10/12/2021 the reported entity was required to report on the reasons why the medical opinion collected health data from the reporting person, which would not be linked to the incapacity process permanent reference .

4. On 12/23/2021, the reported entity responded to the aforementioned request through a letter in which it stated the following:

- That, in relation to the tasks of the medical inspector, he "must only take into account the health data that are directly or indirectly linked to the process subject to the evaluation, being able to access information that for a medical evaluation act may be relevant, despite not being the direct reason for the temporary and/or permanent disability or the current illness, but which in some way may influence its evolutionary course, comorbidity or be a key conditioning factor in its evolution, prognosis or limitation functional."

- That "a medical assessment involves a global assessment of the person's condition in relation to diseases or injuries likely to cause a functional limitation. In any case, it is the duty of the medical examiner to evaluate whether or not its inclusion in the opinion

to consider it necessary and interrelated in the evaluation of the procedure that is the subject of the file. "

- What "The evaluating doctors can at their discretion include more or less medical information or make their examination more or less extensive, but they evaluate all the tests and reports and if they consider it relevant, they incorporate this information into the opinions, having to limit themselves to the information about the process that is the subject of the evaluation, related or relevant to medicine."

- That "the evaluating doctors take into account a set of clinical elements and factors to determine the capacity or permanent incapacity, that is, all the documents, which they can provide during the process, or the results of complementary tests that the evaluating doctor considers necessary and, obviously, the act of the own medical visit or recognition to carry out the assessment and the appropriate decision-making and/or proposal correctly to the competent body. Therefore, only those data that are necessary to motivate the final pronouncement should be included."

- That "with the purpose of improving the wording and content of medical reports, courses and workshops are being held at the ICAM aimed at all its professionals related to the protection of personal data, especially with regard to data processing of health."

- That "regarding the medical opinion issued by Dra. (...) (mandatory and non-binding) request for permanent disability (IP) dated May 14, 2021 that ends with presumption of permanent disability with any of its degrees, we consider that it includes content and information medical not the direct object of evaluation and that we do not consider its inclusion necessary to rule on the corresponding proposal, even though it could be taken into consideration to evaluate the entirety of the clinical and care process or if this had an influence on functional limitations."

The reported entity attached various documentation to the letter.

5. On 21/03/2023, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the General Sub-Directorate of Medical Assessments of the Department of Health (ICAM), for an alleged infringement provided for in the Article 83.5. *a* , in relation to article 5.1. *C* ; all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, regarding the protection of natural persons with regard to the processing of personal data and the free movement of such data (RGPD) . This initiation agreement was notified to the imputed entity on 03/23/2023.

6. 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.

7. On 03/04/2023, the ICAM made objections to the initiation agreement .

8. On 05/05/2023, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish the General Sub-Directorate of Medical Assessments of the Department of Health as

responsible for an infringement provided for in article 83.5. *a* in relation to article 5; all of them from the RGPD.

This resolution proposal was notified on 08/05/2023 and a period of 10 days was granted to formulate allegations.

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

proven facts

The medical opinion issued by an ICAM medical assessor on 05/14/2021, as part of a permanent incapacity procedure initiated following a request from the complainant, included data related to his health that were not relevant to resolve the IP procedure, in view of the ailments that motivated its initiation; therefore, this information is excessive and unnecessary. Regarding this, it should be noted that the process of permanent incapacity was based on injuries to the back, feet and cornea, and the said opinion contained information about a gynecological pathology.

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993 apply to this procedure , according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority 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. The accused entity has not made allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

In its statement of objections, the ICAM reproduced a large part of the statements made during the preliminary information phase that preceded this procedure. In essence, it stated that the evaluating doctors value, in each case, the information that is included in the opinions, "having to limit themselves to the information of the process that is the subject of the evaluation, related or relevant to medicine."

Next, the ICAM explained that, when drawing up evaluation reports, professionals must keep in mind the principle of minimizing personal data, provided for in article 5.1. *c* of the RGPD, and also that these opinions "must only contain the personal data that are necessary to achieve the intended purpose, in this case, to determine the origin of a permanent incapacity." In relation to the above, he argued that it is necessary to omit the data that are not necessary for the purpose of ruling on eventual incapacity. And, with regard to the aforementioned report, he admitted that it had included information that was not necessary "to rule on the corresponding proposal."

Finally, the ICAM also indicated that, during the month of June 2022, training sessions related to the drafting of medical opinions and data protection would have been carried out among its workers.

Having established the above, this Authority values very positively the training actions given by the imputed entity, to make its staff aware of the importance of complying with data protection regulations. However, these circumstances cannot detract from the classification of the imputed facts since, as recognized by the ICAM, medical information was included in the reference report that was not necessary in accordance with its purpose.

At this point, it should be added that, although the commission of the imputed offense would be materially attributable to the evaluating doctor who wrote the report with completely unnecessary medical information, the liability system provided for in the RGPD and, in particular, Article 70 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD), places the responsibility for breaches of the data protection regulations on those responsible for the treatments , and not about their staff. Specifically, article 70 of the LOPDGDD establishes the following:

> "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."

In accordance with the responsibility regime provided for in the data protection regulations, the person responsible for the facts that are considered proven is the Department of Health's Subdivision General for Medical Assessments (ICAM), given its status as the person responsible for the treatment in relation with which the imputed offense was committed.

3. In relation to the facts described in the proved facts section, relating to the inclusion of excessive health data in a medical opinion, it is necessary to go 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 has been proven, which constitutes the offense provided for in article 83.5. *a* of the RGPD, which typifies the violation of the " basic principles for treatment ", among which the principle of minimization is at the top.

The conduct addressed here has been included as a very serious offense in article 72.1. *a* of the LOPDGDD, as follows:

> "a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679."

4. Article 77.2 of the LOPDGDD provides that, in the case of infringements committed by those in charge or in charge listed in article 77.1 of the 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 similar terms 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 this case, it is unnecessary to require the General Sub-Directorate of Medical Assessments of the Department of Health to adopt corrective measures to correct the effects of the infringement, nor to carry out any other action, given the circumstances of the specific case and that it is 'a timely event, already accomplished.

resolution

For all this, I resolve:

1. Admonish the General Sub-Directorate of Medical Assessments of the Department of Health (ICAM) as responsible for an infringement provided for in article 83.5. *a* in relation to article 5, 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 General Directorate of Medical Assessments of the Department of Health (ICAM).

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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day

after its notification , in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of the 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 under 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