

## File identification

Resolution of sanctioning procedure no. PS 27/2023, referring to the Health Consortium of Alt Penedès and Garraf (Hospital Residencia Sant Camil).

## Background

1. On 10/05/2022, the Catalan Data Protection Authority received a letter of complaint against the Catalan Health Service (hereinafter, CatSalut), on the grounds of an alleged breach of the regulations on protection of personal data .

The complainant ((...)) stated that CatSalut sent an SMS and made a call to a phone number that was not his, and that this led to the disclosure of information about his health to a third party person, without their authorization.

Along with the complaint, he provided a copy of the letter of complaint that he had submitted to CatSalut on (...) (with entry settlement no. (...)). In this writing he stated, literally:

" During the month of February 2022, the notification system sent an SMS to my father's mobile phone, an SMS that should have been sent to me, since it contained health information about me. I went to complain to Sant Camil hospital in Sant Pere de Ribes, which was the site that appeared in that message, but they dismissed my claim.

Poco después, on the day (...), one day after visiting me with the GP at the Castelldefels outpatient clinic, the same system dependent on CatSalut makes a phone call to my father's same mobile phone, to communicate an in-person appointment from me in the CSM of Castelldefels for the day (...). My father identified himself as such in the conversation held, he never impersonated my identity, and yet they gave him my personal and medical information."

The complainant also provided copies of several emails exchanged with CatSalut following his complaint. Among these emails, it is worth noting the one sent by the complainant on 10/03/2022, in which he answered the question that this entity had asked him about what was the telephone number to which the communications that were the subject of his complaint (phone call and SMS), literally:

" **They went to the phone number (...)** (...), [the bold is from the Authority] which is my father's number, not mine. And they did it up to 2 times. The fact that I change the telephone number that appears on my file, and you do not have the new telephone number, until I notify you, does not give you the right to send my communications to a third party, even if I am related . It is a serious violation of the law. And the administration is the first that must comply with the law, and ignorance of it does not exempt it from compliance."

2. The Authority opened a preliminary information phase (no. IP 178/2022), 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 the entity or entities responsible and whether the facts were capable of motivating the initiation of a sanctioning procedure.

3. On 05/27/2022, CatSalut - as responsible for processing the Central Register of Insured Persons (RCA) - was required to indicate which contact telephone number of the reporting person was registered in this database, during the period of time in which the reported events took place (1/02/2022 to 22/02/2022).
4. On 12/09/2022, CatSalut responded to the request with a letter in which it explained that, during the aforementioned period, the RCA had the following contact telephone numbers linked to the complainant: ( ... ) **and** (...).

Likewise, in relation to the complaint submitted by the complainant to CatSalut, he provided the answer given to him on (...), literally:

"Sir (...),

In relation to your letter addressed through the Citizen Service Mailbox registered with registration number (...).

We must inform you that the contact details listed in the Central Register of Insureds are the ones you have provided us. We have contacted your Primary Care Team and your referring Hospital in order for them to check that the contact database corresponds to the information you have given us and as you have informed us the data is correct. For your knowledge, we inform you that the data relating to the telephone number and email address can be updated through My Health."

5. On 09/14/2022, also during this preliminary information phase, the Authority's Inspection Area addressed a new request to CatSalut, in order to have more information to clarify the circumstances of the events reported. Specifically, he was asked to report on the following points:
  - If between 1/02/2022 and 22/02/2022 you sent an SMS to the phone number ' (...)', to inform the reporting person about a medical matter.
  - If on date (...) the reporting person had a scheduled medical appointment at the Center for Mental Health of Adults in Castelldefels (henceforth, CSMA) and, if so, indicate how they informed him of this appointment .
6. On 10/25/2022 , the Authority sent a letter to the complainant, asking him to provide additional information to clarify certain aspects related to the facts reported. Of the notifications made to the complainant by various means, those made by electronic means were rejected and those made by certified mail were unsuccessful.
7. On 11/23/2022 , given that the deadline had been exceeded without CatSalut responding to the request of 09/14/2022, this Authority reiterated the request with a deadline of 5 days to respond, with the warning that failure to comply could result in a breach of data protection regulations.
8. On 11/29/2022, CatSalut responded to the request through a letter in which it stated the following:

- That it does not have direct communications with patients for healthcare reasons and that, for this reason, they did not have any contact with the person making the complaint.
  - That it does not have direct access to the activity agendas of the supplier entities, so that it could not confirm whether the reporting person had an appointment scheduled on (...).
  - That he is not aware of the mechanism used by the provider entity to inform about the schedule of visits.
- 9.** In relation to the fact reported linked to the sending of an SMS to a telephone number other than the complainant, in view of CatSalut's response and that the complainant had stated that the SMS referred to the Hospital Residencia Sant Camil (henceforth, HRSC), on 16/12/2022 this Authority required the Health Consortium of Alt Penedès and Garraf (henceforth, CSAPG), on which the HRSC depends, to answer the following questions:
- If the reporting person was a user of the HRSC as part of the public provision of health services.
  - If so, please report whether during the month of February 2022 an SMS was sent to the phone (...)(...) and, if so, how this phone number was obtained and what it was literal content of the SMS.
- 10.** On 01/13/2023, given that the deadline granted had been exceeded without the CSAPG responding, this Authority reiterated the requirement, with the warning that failure to comply could result in an infringement of the regulations of data protection.
- 11.** On 01/20/2023, the CSAPG complied with the requirement with a letter stating the following:
- That the complainant was referred to the HRSC by the EAP Sitges [Primary Care Team] as part of the public provision of health services and that a visit was scheduled for the day (...).
  - That two SMS were sent to the telephone number (...)(...), in relation to the scheduled medical visit on (...).
- The SMS sent by the HRSC are reproduced below:
- (...)."
  - (...)."
  - That "the telephone number used ((...)) was obtained in 2011 as a result of a Primary Care referral at the Hospital Residencia Sant Camil. In the data of the file of the complainant in the CSAPG there is the telephone number (...)(...)."
- 12.** On 02/27/2023, a new request was sent to the CSAPG, so that it could report on whether it had access to the RCA and, if so, state the reason why this record was not consulted.

Likewise, he was asked to report whether his center had treated the complainant continuously over time, or if, on the contrary, he had been treated at two specific moments as a result of single referrals (from 2011 and 2022). Also that, if they had treated him continuously, indicate whether on other occasions he had been sent reminders of appointments by SMS, to which phone and on which dates.

Finally, he was asked to report if, with the derivation from the EAP of Sitges in 2022, this center provided him with a contact number for the person making the complaint and, if so, specify which one and state the reason whereby he used the disputed telephone number ((...)) and not the one that would have been provided to him with the referral, if that was the case.

13. On 02/03/2023, the CSAPG responded to the request through a letter stating the following:
- That the CSAPG does have access to the RCA. That "this register was not consulted in the first place due to human error, given that the professional functions of our admissions workers include the obligation to consult the RCA to retrieve the data."
  - That the reporting person had been treated continuously. That he had visited the center "(...)." But that they had no record of having sent SMS to the patient in the management of these visits.
  - That "reviewing paper documentation, we have detected that: - Before 4/12/2012 the patient had as reference telephone number (...). - On 04/12/2012 he requested in person to change his phone to (...). - On 23/04/2014 he made another phone change, providing the (...) [the controversial phone]. - As of today, we have already updated the telephone by recording the (...) and landline (...)."
  - That "on the referral sheet issued by the Sitges EAP, the patient's telephone number was listed as (...)."
  - That "data was not updated in our system due to human error."
14. On 08/05/2023, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the CSAPG for an alleged infringement provided for in article 83.5. a in relation to article 5.1. d \_ both of 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 of such data (RGPD) . This initiation agreement was notified to the imputed entity on 05/10/2023.
- The initiation agreement explained the reasons why no charge was made for having disclosed health data of the reporting person to a third person (his father), as a result of the SMS sent to the telephone number ( . ..); and this because, in essence, it was not proven that this third person actually accessed the content of the controversial SMS.
15. On the same date 08/05/2023, an archiving resolution was issued regarding the Sant Joan de Déu Health Park -entity to which the CSMA depends- , in relation to a reported event consisting of a call to the same telephone number indicated in the preceding

paragraph, in the framework of which, according to the person making the complaint, data relating to his health would have been revealed to his father.

16. 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 widely exceeded and no objections have been filed.

### **proven facts**

The complainant, a patient of the EAP in Sitges, was referred to the Hospital Residencia Sant Camil (HRSC) - dependent on the Consorci Sanitari de l'Alt Penedès i Garraf -, as part of the public provision of health services. Along with this referral, the EAP provided the HRSC, as the patient's contact telephone number (...). Following this referral, the HRSC scheduled a visit with the complainant on (...).

The HRSC sent the complainant two SMS (on 02/02/2022 and 02/14/2022) reminding him of the medical visit scheduled for (...). These SMS were sent to a telephone number (...) that had been in the organization's database since 2011, following medical care provided on that date. This number did not match the contact phone number provided by EAP Sitges together with the referral, nor did it match any of those listed in the Central Register of Insured Persons (4th record), the CatSalut database to which it has access the HRSC and which, as the entity has acknowledged, it did not consult due to human error.

### **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. In accordance with article 64.2. f 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 not formulated allegations to the initiation agreement. This agreement contained a precise statement of the imputed liability.
3. In relation to the fact described in the previous section, relating to the principle of accuracy, it is necessary to go to article 5.1. d of the RGPD, which provides that personal data will be " accurate and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy") . "

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 " a) the basic principles for treatment, including the

conditions for consent pursuant to articles 5, 6, 7 and 9", among which is the principle of accuracy

The conduct addressed here has been included as a very serious offense in article 72.1. a of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights ( LOPDGDD), as follows:

"a) The treatment of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679."

4. Article 77.2 of the LOPDGDD provides that, in the case of infractions committed by those responsible or in charge listed in article 77.1 of the same law, 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 . (...)".

CSAPG should not be required to adopt corrective measures to correct the effects of the infringement, since it is a one-off event that has already been completed.

## **resolution**

For all this, I resolve:

1. Admonish the Consorci Sanitari de l'Alt Penedès and Garraf, as responsible for an infringement provided for in article 83.5. a in relation to article 5.1. d , both of the RGPD.
2. 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.
- 3 . Notify this resolution to the Health Consortium of Alt Penedès and Garraf.
4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. 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 Law 29/1998, of July 13, regulator of 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

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