

File identification

Resolution of sanctioning procedure no. PS 30/2023, referring to the Department of Health

Background

1. On 05/28/2021, the Catalan Data Protection Authority received a letter of complaint against the EAP Osona Sud – Alt Congost, SLP (EAP), which manages the Primary Care Center Centelles (CAP Centelles), due to an alleged breach of the regulations on personal data protection . The complainant stated the following:

1.1 That, on 07/06/2020, she was attended to by a dentist (Dr. A) in the emergency room at CAP Centelles for "a dental problem " . Regarding this, he pointed out that on that same day, from CAP Centelles, his shared clinical history (HC3) would have been accessed - specifically, the "diagnostic information", "summary clinical history" and "clinical report information" modules -, at 1:34 p.m. and at 1:35 p.m. , accesses that he considered unjustified.

The reporting person indicated that the dentist attended to her at 1:00 p.m. that day. This fact, according to him, would prove that the subsequent accesses to HC3 (at 13:34 and 13:35 hours) were improper, since they would have been carried out when she had already been attended to.

1.2 That on 07/06/2020 and 08/01/2020 he found that, from CAP Centelles, he had been assigned a general practitioner (Dr. D) who did not match the one he had been assigned for more than twenty years years in CAP Florida and that "allegedly, [Dr. D] between July 13 and 31, 2020, the date on which it is assigned to me, I had not worked at CAP Centelles for some time."

1.3 That on 03/12/2020, 10/01/2021 and 27/04/2021 he accessed the La Meva Salut (LMS) platform, specifically in the "Reports and results" section of his HC3, and found that, in relation to the diagnoses on 22/08/2015, 10/04/2016, 19/05/2018, 29/05/2020 and 30/05/2020 (all of them linked to attention he had received at CAP Centelles), it contained inaccurate information regarding the professional responsible for monitoring each care process. Specifically, the name of the professional who treated her at each medical visit had been replaced by the name of the dental professional who had assisted her on 07/06/2020 (Dr. A).

1.4 That the CAP Centelles does not keep your medical history referring to the period before the month of May 2020.

1.5 That, on 30/05/2020, Dr. B - optional who provides service at CAP Centelles - entered two entries in his medical history at CAP Centelles (at 10:55 and 10:57 hours), which would contain inaccurate information " *given* that they do not correspond to reality ." The complainant stated, first of all, that from the literal notes made by Dr. B would appear to have gone to CAP Centelles in person, when this was not true, since the consultation was by telephone and lasted three minutes (from 10:46 to 10:49). Secondly, it indicated that certain information entered by this doctor, linked to the reason for the medical assistance that day, was also not true, since it contained

"totally false facts, which damage my image as a patient, and can cause that the attention I receive is not adequate, due to the qualification given to me, of going to Caps d'Osona for trivial illnesses (...)."

- 1.6 That his right of access, on the one hand, to the traceability of his medical history from CAP Centelles for a certain period and, on the other hand, to obtain a copy of his medical history from the "HEAD of Osona".

In order to substantiate the reported facts, he provided numerous documents, among which it is worth noting:

A. In relation to the fact reported in section 1.1, it provided:

A.1. Screenshot of the LMS platform, referring to access to its HC3 on 07/06/2020, in which two entries can be seen, at 1:34 p.m. and at 1:35 p.m., carried out from CAP Centelles .

A.2. Copy of your HC from CAP Centelles, in which there is an annotation made by Dr. At (dentist) on 07/06/2020, at 1:00 p.m.

B. In relation to the fact reported in section 1.2, he provided the document entitled "Patient Record", issued by the EAP on 08/01/2020, in which it is observed that the reporting person is listed as "Type of patient : displaced " at CAP Centelles and that the doctor assigned to him is Dr. d.

C. In relation to the fact reported in section 1.3, he provided the documentation specified below.

On the one hand, a copy of several screenshots of the HC of CAP Centelles in relation to the care provided in this center:

C.1 Document that would be related to the visits of 22/08/2015, 10/04/2016 and 19/05/2018, in which the literal "there is no note in HC3 with the selected filter."

C.2 Visit of 05/29/2020, in which it is stated that she was treated by Dr. c.

C.3 Visit of 30/05/2020, in which it is recorded that she was treated by Dr. B.

On the other hand, he provided screenshots taken from the LMS, where it is observed that on the dates indicated the medical professional who would have attended him would be Dr. To (dentist), in relation to the episodes related below:

"Sprained / twisted / sprained ankle" 08/22/2015 Dr. A

"Generalized abdominal pain / spasms" 04/10/2016 Dr. A

"Acute upper respiratory tract infection 05/19/2018. Dr. A

"Diseases of the teeth and gums" 05/29/2020 Dr. A

"Absence of illness" 30/05/2020 Dr. A

D. In relation to the fact reported in section 1.4, he provided the document specified in section C.1 above.

E. In relation to the fact reported in section 1.5, it provided:

E.1. Copy of the HC of CAP Centelles, which contains the notes that the doctor (Dr. B) had entered on 05/30/2020, at 10:55 and 10:57 hours. Specifically, that the person making the complaint comes there because of a "stomach ache", who has been " visited on several occasions by [emergencies] in the head of your area, of ozone, Hgclínic , of emergencies for banal pathology. After conflict with administrative, go to you _ DISEASE-FREE CONSULTATION."

E.2. Several phone records linked to a phone number (which the complainant claims is hers), showing an outgoing phone call to no. 938810485 (which would correspond to the CAP Centelles), made on 05/30/2020 at 10:46 a.m. and which would last three minutes.

F. In relation to the fact reported in section 1.6, he provided various documentation related to the exercise of his right of access.

Regarding the complaint referred to in section 1.6, the Authority initiated two procedures for the protection of rights, in accordance with article 16 of Law 32/2010, of October 1 of the Authority Catalan Data Protection Authority. On the one hand, procedure no. 58A/2021, referring to the Catalan Health Institute (ICS); and, on the other hand, procedure no. 58B/2021, referring to the entity reported here. Both ended with separate resolutions of the Director of the Authority, dated 03/11/2021.

2. The Authority opened a preliminary information phase (No. IP 222/2021), in accordance with the provisions of Article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for 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 (LPAC), to determine whether the facts related to the points of the 1.1 to 1.5 of the previous section were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 07/22/2021 the reported entity was required to comply with the following:

3.1. Bring a copy of the reporting person's HC3 access log dated 07/06/2020 and justify each of the accesses.

3.2. Report on the reasons why, during the months of July and August 2020, the complainant was assigned a general practitioner (Dr. D) different from the one he would have been assigned to the Florida CAP; optional which, moreover, would not provide services to CAP Centelles.

3.3. Report on whether the CAP Centelles keeps the medical history of the reporting person, referring to the period before the month of May 2020.

- 3.4. A indicated the reason why the CAP Centelles modified the information from the HC3 of the person reporting, linking the assistance provided to the CAP Centelles on 22/08/2015 , 10/04/2016, 19/05/2018 , 29/05/2020 and 30/05/2020 with a single practitioner (Dr. A, dentist). This information would not coincide with that contained in the HC of CAP Centelles.
- 3.5. To pronounce on the accuracy of the information referred to the clinical episode dated 05/30/2020, visit made by Dr. B.
4. On 06/09/2021, the reported entity responded to the aforementioned request through a letter in which it set out the following:
- 4.1 That the dental professional who treated the complainant, on 06/07/2020 (Dr. A), accessed his HC3 on the same day of the visit. Specifically, he consulted the summary of his clinical history and clinical reports at 1:34 p.m., and the diagnoses at 1:35 p.m.
- That the accesses "were justified by the fact that an antibiotic was prescribed in the dental procedure presented by the patient who, it should be remembered, was assisted at the CAP Centelles as urgent care (not scheduled) for a patient assigned to another ABS (CAP Florida and, therefore, treated as a displaced user, with the pretense that the dentist prescribed an antibiotic through the public system - Amoxicillin - that had been prescribed by his private dentist."
- 4.2. That "as a displaced user of another ABS - CAP Florida - does not have a doctor assigned to our Centelles ABS Primary Care Center. (...) Regarding the assignment to the complainant as a family doctor to Dr. D (July – August 2020) state that this health professional provides services as a continuing care doctor in some on-call services in that summer of 2020 and that, as previously certified in the traceability report, it is not recorded no record of access or assignment in the health care of this doctor to Mrs. [complainant]."
- 4.3. That "the objective clinical history and the notes that make up the so-called clinical course of the patient [here the complainant] is in her CAP where this user is assigned her ABS of reference which in this case is the Delta Primary Care Service of Llobregat del Prat de Llobregat. The health care given to the patient on the occasion of her visits to the continuing care service (emergency) presents some records in her patient file since 22.08.2015 (copy attached). This means that we have records of the emergency visits that this displaced user makes at CAP Centelles with the corresponding notes of the doctor who treated her."
- 4.4. That "it is not true the statement that from the Centelles CAP the information in the complainant's HC3 was modified regarding the doctors who treated her on different dates at the Centelles CAP, linking all visits to the dentist (...) for the simple argument that this action cannot be done within the HC3 system."
- 4.5. That "about the accuracy of the information relating to the complainant contained in the HC CAP Centelles, specifically, about the facts described by Dr. B (...) [notation of 05/30/2020] we can only confirm that, indeed, the family doctor who attended to the [here complainant], as continuous emergency care - was Dr. . B, who wrote down this

sentence that you mention without, on our part, deserving more comment than the opinion that this professional expressed at that time in the context of great care pressure motivated by the COVID pandemic- 19.”

The reported entity attached various documentation to the letter.

5. On 04/04/2022, also during this preliminary information phase, the Authority addressed a new request to the reported entity to answer some of the questions that had been raised. Thus, the entity was required to comply with the following:
 - 5.1. Report on the reasons why the dental professional (Dr. A) accessed the complainant's HC3, on 07/06/2020 at 1:34 p.m. and at 1:35 p.m., when theoretically he had visited (that same day at 1:00 p.m., as stated in the HC of the CAP Centelles -section A.2 of the 1st antecedent-).
 - 5.2. Expand the information on the reasons why the “Patient File”, which was given to the person reporting on 01/08/2020, included Dr. D as your assigned physician, instead of your CAP Florida GP.
 - 5.3. Explain the apparent contradiction (object of complaint) between the information that appeared in the HC of CAP Centelles and that contained in LMS, in relation to the following medical assistance:
 - a) Visit (or report) of 29/05/2020: at the HC CAP Centelles it is stated that it was made by Dr. C, while the HC3 includes Dr. A.
 - b) Visit on 30/05/2020: at the HC CAP Centelles it is stated that it was made by Dr. B, while HC3 includes Dr. A.
 - c) Visits on 22/08/2015, 10/04/2016 and 19/05/2018: according to the document provided by the complainant (section C.1 of background 1), at the HC of CAP Centelles it would contain the following information: "no note is recorded" in the HC CAP, while in the HC3 it is recorded that all of them were made by Dr. A.
 - 5.4. Report on whether CAP Centelles kept medical information prior to May 2020, relating to the reporting person.
6. On 04/14/2022, the EAP Centelles responded to the requirement indicated in the previous antecedent, in the following terms:
 - 6.1. That the dental professional accessed the complainant's HC3 on 07/06/2020. Asked about the reason for the time difference between the visit and the entrances to the HC3, he argued the following: "the later access was to think about possible allergies or other diseases about which he had not inquired, that could influence the prescription of the antibiotic he had made. In fact, the departure time of the visit was 13:16 and the consultation time at HC3 at 13:30, therefore almost immediately afterwards."
 - 6.2. That on 07/06/2020 and 08/01/2020 the person making the complaint was assigned a different GP than he had, given that "the computer program we use, OMIAPWEB,

requires a doctor to be assigned to open a file to a patient Displaced patients are assigned by the administration by default, Dr. D in the well-understood internal, which corresponds to a patient transferred from other Basic Health Areas. It corresponds to the doctor of the displaced."

- 6.3. What in the HC of CAP Centelles there are clinical notes linked to the reporting person prior to May 2020, "which correspond to closed episodes, that is to say not valid (...)." In order to prove this, a screen printout (IMP 1) was provided in which there is a list of care episodes prior to May 2020 (marked in blue), which would be linked to the reporting person.
7. On 02/05/2022, the Authority again required the EAP to report whether, in relation to the care episodes contained in document IMP 1, medical documentation/information was kept. Likewise, the reported entity was also required to respond to what had been required of it, in relation to the apparent contradiction between the content of HC3 and the HC of CAP Centelles.
8. On 06/05/2022, the reported entity's response to the request for information indicated in the previous antecedent was received. In literal terms, the EAP reported the following:
- 8.1. That the CAP Centelles keeps clinical information of the reporting person prior to May 2020 "all entries prior to this date are kept in the Primary Care Clinical History (HC_AP) of our CAP de Centelles health center. (...) There are entries prior to said date of 05/19/2020. These annotations correspond to closed episodes, that is to say, not valid (in blue in document IMP 1), from other previous reasons for consultation. Add that the HC_AC OMIAP system does not allow the deletion or modification, after the date of the visit, of any annotation."
- That "the explanation of why a specific search for clinical information by the reporting person had yielded an unsuccessful result (no results found) could have been due to the fact that "the acute episodes for which a patient consults have a specific period of validity, generally of 6 months, therefore, after this period, they cease to be visible and become inactive, without having been deleted. Conversely, chronic episodes remain permanently visible. As you can see, the "CONSULTES ODONTOLOGIA" episode remains black, active, given that it is treated as chronic. It is a tailor's drawer where the different dental consultations are recorded. (...)."
- 8.2. Regarding the apparent contradiction between the HC3 and the HC of CAP Centelles, the EAP stated the following (the bold is from the Authority):
- That "the CAP of Centelles has an accredited HC_AP system called OMIAP, which meets the requirements established by the Department of Health. The Centelles CAP adheres to the UCH Type Code and follows its recommendations. The Catalan Health Service (CatSalut) establishes the obligation to share clinical, pharmacy, sick leave and other information, according to the requirements, standards, encryption and security elements. (...) The various records in the HC_AP of the CAP de Centelles have not been modified, deleted or established by any professional other than the one who attended to [complainant]."

- That "the HC3 is not the sum of the clinical histories of the health centers and does not incorporate all the information of the clinical histories but only some of them, according to the criteria of CatSalut and the Department of Health."
- That "as can be seen in Figure_3 (which is attached), in the data extracted from the clinical course of HC3 referring to care at the CAP de Centelles, there is the following warning in the heading: 'for for technical reasons it has not been possible to retrieve all the information, the data listed is partial'. This is the reason why there are no entries prior to HC3 that are contained in the HC_AP of the Centelles CAP. It can also be observed that the identification of the professional who attended to the patient in each visit is the same as that which appears in the HC_AP of the CAP de Centelles and HC3 (Figures 1, 2 and 3 [which contains the letter]). Therefore there is no discrepancy between the authorship of the HC_AP and HC3."
- That "all the documents mentioned and provided by the person reporting (...), do not correspond to HC3 annotation but to 'La Meva Salut'. My Health: It is a safe, personal and non-transferable online digital health space, where the Department of Health makes available to each citizen the most relevant data relating to their health that allows each patient to access their information health and carry out certain procedures in a simple, secure and confidential manner. It is a viewer that the Catalan Health System (SISCAT) has given to citizens that allows them to access certain relevant information, such as medical reports, diagnostic tests, etc. **The responsibility for the information contained and its custody correspond to the Department of Health** . In no case is the CAP de Centelles responsible and cannot make any changes. It is important to note that it does not collect all the complete information of the patient's clinical history, but that which the Department of Health has determined."
- That "**Therefore the discrepancy observed between the authorship of the annotations in the HC_AP and HC_3 actually corresponds between these and La Meva Salut. There is no authorship discrepancy between the HC_AP and HC3 as it is proven** . The cause of the observed discrepancy must be attributed to technical reasons, the complexity of the system, the tables and codes, their updating and for other reasons that we do not know, it appears by mistake in the LMS space an authorship of visits that do not correspond to those that exist in the HC_AP, which are also different from those that exist in the HC3; which, if they correspond with those of the HC_AP of the CAP de Centelles."

9. On 03/21/2023, the Authority required the Department of Health to comply with the following:

- In relation to the CAP Centelles, I would like to report on the procedure by which the information relating to the visits, reports and medical diagnoses carried out by the health professionals of this center is transferred to the HC3.
- Point out who is responsible for defining the information (and the way to visualize it) that is shown to users through the LMS.

- Indicate in detail the reasons why the reporting person sees in his LMS virtual folder - in the "Reports and results" section - information (apparently erroneous) regarding the medical professionals who treated him on different dates in the CAP Centelles (those indicated in section C *in fine* of the 1st antecedent), so that the information displayed would not coincide with the clinical course contained in the HC3 referring to the visits of the CAP Centelles, nor with the history CAP Centelles clinic.
 - Indicate, in the case at hand, who would have been responsible for defining the (apparently erroneous) information displayed in LMS.
10. On 04/21/2023, the Department of Health responded to the request for information indicated in the previous antecedent, in the following terms (the bold is from the Authority):
- That "Currently the Centelles CAP is using the ' eCap ' Platform. Information fed into the HC3 from the center is automatically dumped. It should be noted that in relation to the period of data referred to in the claim, initially the dumps were made via 'web services ' (...)."
 - That "The medical history information that is viewed through La Meva Salut corresponds to HC3, since in this case La Meva Salut is an HC3 viewer."
 - That "**The display of the information in the La Meva Salut virtual folder that identifies medical professionals who, according to the claimant, are not the ones who attended to her in the visits she herself indicates, has occurred for technical reasons in the carrying out the dumping of this data .**"
 - That "It should be borne in mind that La Meva Salut is a viewer of some of the data available to HC3. As indicated in point 1, the dumps have specific structures if the data is incorporated into the different fields depending on the type of information configured. In the case of HC3 there is a field relating to the identification of the professional assigned to the user, who is responsible for the patient, and a field relating to the identification of the professional providing the assistance which may or may not coincide with that. In the case of La Meva Salut, the identification field that is included is that of the assigned professional."
 - That "On the other hand, in the assistance that takes place in an ABS/CAP that is not the one assigned to the user based on their place of residence, the center assigns them a reference professional."
 - That "The public health system of Catalonia has several tools that allow access to health information (...) The complexity of this system is very high not only because of the volume of data it deals with, but also because of the movement , daily increase and update of this data, as well as by the information systems that make it possible and the security systems that preserve it. And, although the benefits that this system entails for the health care of the population are obvious, and although the necessary measures are taken for the proper fit and operation of the system, some technical mismatch may occur."

11. On 05/23/2023, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Department of Health, in relation to the facts described in section 1.3, since it is the entity responsible for the information contained in the "La Meva Salut" platform, for an alleged violation provided for in article 83.5. a in relation to article 5; 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 of such data (RGPD). This initiation agreement was notified to the imputed entity on 05/26/2023. With regard to the rest of the imputed facts, related to the EAP, on 05/23/2023 the director of the Authority issued a filing resolution. In that resolution are included the reasons that justified discarding the initiation of a sanctioning procedure in relation to the facts attributed to the EAP.

In the agreement to initiate this procedure, the Department of Health was granted a period of 10 working days to formulate allegations and propose the practice of tests that it considered appropriate to defend its interests.

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

proven facts

The complainant accessed the La Meva Salut platform on several occasions - the last one on 04/27/2020, and specifically the "Reports and results" section of his shared medical history, and found that, in relation to the diagnoses of 22/08/2015, 10/04/2016, 19/05/2018, 29/05/2020 and 30/05/2020, there was inaccurate information regarding the professional responsible for monitoring each process assistance. Specifically, the name of the professional who treated her at each medical visit had been replaced by the name of the dental professional who had assisted her on 07/06/2020.

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 facts described in the proven facts section, relating to the inaccuracy of the information contained in the La Meva Salut platform of the reporting person, it is necessary to refer to article 5.1. d of the RGPD, which provides that personal data must 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 imputed fact has been duly proven, given that the Department of Health has recognized that the display of inaccurate information shown by the My Health virtual folder of the reporting person, with respect to the professional responsible for monitoring of certain care processes, obeys a technical incident "in carrying out the dumping of these data".

This fact is constitutive of the infringement provided for in article 83.5. a of the RGPD, which typifies the violation of "basic principles for treatment ", among which the principle of accuracy 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 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:

"(...) will issue a resolution declaring the infringement and establishing, in its case, the measures to be taken to stop the conduct or correct the effects of the infringement that has been committed.

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 . (...)".

to carry out the actions as soon as possible, and in any case within a maximum period of 15 days from the day after the notification of this resolution opportune to record in La Meva Salut the exact information of the reporting person on the diagnoses of 08/22/2015, 04/10/2016, 05/19/2018, 05/29/2020 and 05/30/2020, respect the professional responsible for monitoring each care process. Specifically, it is necessary to state the identity of the professional who assisted the complainant in each medical visit and delete the inaccurate references associated with the dental professional who assisted her on 07/06/2020.

the Department of Health must inform the Authority within the following 10 days , without prejudice to the Authority's inspection powers to carry out the checks corresponding

resolution

For all this, I resolve:

1. Declare that the Department of Health has committed an offense provided for in article 83.5. a in relation to article 5, both of the RGPD.
2. Require the Department of Health to adopt the corrective measure indicated in the 4th legal basis, consisting of entering in the La Meva Salut folder of the person reporting accurate information about the medical professionals who assisted them on 22/08/2015, 10/ 04/2016, 19/05/2018, 29/05/2020 and 30/05/2020, and to accredit before this Authority the actions taken to comply with them.
3. Notify this resolution to the Department of Health.
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.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director