

Ref.: IAI 5/2018

**Claim: 15/2018**

**Report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in the complaint file against a City Council in relation to a request for access to information from the municipal register of inhabitants.**

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on claim 15/2018, presented in relation to the request access to information contained in the municipal register of inhabitants.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and having seen the report of the Legal Counsel, the following report is issued:

**Background**

1. On January 27, 2017, the claimant submitted a letter to the City Council, in which he requested information relating to the registration, at his deceased father's address, of other people. Specifically, he requests a copy of the cohabitation certificate that, according to the claimant, the City Council would have issued in favor of another person.
2. The file sent by the GAIP contains a copy of the notarial deed of declaration and acceptance of inheritance -although incomplete-, according to which the claimant would have the lifetime usufruct of the property owned by his father, in relation with which he requests information from the Municipal Register of Inhabitants.
3. On February 16, 2017, the City Council sent a letter of response to the applicant, in relation to the request for "data from the municipal register on his deceased father and his de facto partner", in that access to the requested information is denied.
4. It is stated in the file that the claimant would have addressed the Síndic de Greuges de Catalunya, which, by letter dated September 21, 2017, concluded its action given the presentation of a claim to the GAIP by of the affected person.
5. On January 22, 2018, the applicant filed a complaint with the GAIP against the denial of access to the aforementioned information.
6. On January 26, 2018, the GAIP requested a report from the City Council in relation to the claim presented. On the same date, the GAIP requests this Authority to issue a report in relation to the claim presented.

## Legal Foundations

### I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC), which regulates the claim against resolutions on access to public information, establishes that if the refusal is based on the protection of personal data, the Commission must issue a report to the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected, understood as any numerical, alphabetical, graphic, photographic, acoustic information or of any other type relating to physical persons identified or identifiable without disproportionate efforts (arts. 5.1.f) and 5.1.o) of the Implementing Regulation of Organic Law 15/1999, of December 13, on the protection of personal data personnel (LOPD), approved by Royal Decree 1720/2007, of December 21 (RLOPD)). Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

### II

According to the claim submitted to the GAIP, the claimant would have requested the following information from the City Council:

"As my father's heir (...) I requested from the City Council of (...) where I lived, information regarding his historical registration, specifically if he had registered other people, and the current situation. (...). He also asked for information regarding the registration of the lady (...), obtained a few months before my father died. With the security that he succeeded

without the authorization of my father and owner of the house, and the mayor decided to register it, moreover, not knowing that the aforementioned lady had already been registered for more than fifteen years in the municipality of (...). "

In the request that the claimant would have presented to the City Council on February 16, 2017, he explains that "Se requiere simultaneo expediente relative to esas inscripciones, si las hubiere, en concrete cualquier autorización expresa y por escrito de Enrique (. ..), owner of Can (...), in relation to the last registration of Ms. (...). Likewise, certificate of coexistence that the Mayor's Office issued to the name of Ms. (...)."

In the letter addressed to the Complaints Ombudsman, which appears in the file, the claimant states that, two months before his father's death (August 2016), the City Council had registered the Mrs. (...), without the express and written consent of her father, and adds that "this registration was admitted as evidence in a trial (...)."

Thus, given the information available, the claimant requests information related to the municipal register of inhabitants, specifically, the registration certificate of Ms. (...), as well as documentation attesting to this registration, specifically, the authorization allegedly signed by his father.

### III

Organic Law 15/1999, of December 13, on the protection of personal data (hereafter, LOPD), protects the personal data (art. 3.a) LOPD), of natural persons who are contained in the Register municipality of inhabitants, such as, for the purposes that concern, the personal data of the person who, according to the claimant, would be registered in the home of his deceased father.

The communication or transfer of personal data, understood as the disclosure of data to a person other than the affected person (art. 3.e) and 3.i) LOPD), must be subject to the general regime provided for in article 11 of the LOPD, according to which:

"1. The personal data subject to treatment can only be communicated to a third party for the fulfillment of purposes directly related to the legitimate functions of the assignor and the assignee with the prior consent of the interested party.

2. The consent required by the previous section is not necessary:

a) When the assignment is authorized by law.

(...)"

The claimant refers to a "cohabitation certificate" in favor of the lady who, according to him, would be registered at her deceased father's address, and also to a "historical registration" of him.

For the purposes of this report, it is necessary to distinguish the request for register data referring to dead persons, from the request for information relating to third living natural persons, who may be registered in the domicile of a dead person.

The processing of data of deceased persons is not subject to the regulations on the protection of personal data (art. 1 LOPD and art. 2.4 RLOPD). Therefore, the data protection regulations would not be an impediment to access to personal data of the claimant's father, without prejudice to compliance with the requirements that may be required by other regulations. Thus, from the point of view of the right to data protection, a testamentary heir could request from a City Council a certificate relating to the registration of a deceased person, attesting to his status (through the contribution of the testament or, where applicable, of a notarial deed of acceptance of inheritance, as could be the case at hand), without prejudice to compliance with the requirements that may be provided for in other applicable regulations.

However, based on the information provided, this is not the assumption being made, but rather that the claimant in his application to the City Council, dated January 27, 2017, asks to know if his father had registered "in other people (...)." Therefore, the request refers to data of other natural persons who in principle must be considered to be alive.

From the perspective of data protection, it must be taken into account that any information about these affected natural persons (art. 3.e) LOPD) is their personal information (art. 3.a) LOPD), and is protected by data protection regulations.

Therefore, any communication of personal data of the person or persons affected – regardless of the fact that the administrative document in which your data is found may also refer to a dead person, you are subject to the personal data communication regime (art. 11 LOPD).

If, as can be inferred from the information available, the claimant does not have the consent of this person, or of any other natural person who may be registered at the address in question, the transfer of data can only occur when there is 'a qualification in a standard with legal rank.

#### IV

Given that the claimant is requesting information on the registration of third parties at his address, it is necessary to refer to the legal regulations governing the Municipal Register of Inhabitants (hereafter, the Register).

The Register is an administrative register regulated by Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL).

According to article 16.1 LRBRL, "1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"

In the same sense, according to article 40.1 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC): "The municipal register is the administrative register containing the residents of a municipality. The data contained in the register constitute proof of residence in the municipality and usual address.

The certifications issued by the town councils on this data have the character of a public document and, consequently, enjoy the presumption of veracity and prove the data recorded in them, for all administrative purposes.(...)."

Royal Decree 1690/1986, of July 11, approving the Population and Demarcation of Local Entities (RPDTEL), provides the following in article 53:

"1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes."

Since the municipal register of inhabitants is an **administrative record**, the following must be taken into account.

Article 13 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC) recognizes in section d) the right of access "to public information, files and records, in accordance with the provisions of Law 19/2013, of December 9, on transparency, access to public information and good government and the rest of the Legal Order."

In the area of Catalonia it is necessary to take into account Law 19/2014, of 29 December, on transparency, access to public information and good governance (LTC).

Given this provision of the LPAC, it is necessary to take into account the first additional provision of the LTC, which provides the following:

"2. Access to public information in subjects that have established a special access regime is regulated by their specific regulations and, additionally, by this law."

In the same vein, the first additional provision of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced.

Therefore, in application of the aforementioned provisions of the LPAC and the LTC, it is necessary to preferentially apply the specific regulatory regulations governing the Register, which establishes a special access regime, for the purposes of determining the legal qualification for the communication of the personal data that may be contained therein.

Regarding the data included in the Register, article 16.2 LRBRL provides that:

"2. The registration in the Municipal Register will contain as mandatory only the following data:

- a) Number and surnames.
- b) Sex. c) Usual address.
- d) Nationality. e) Place and date of birth. f) Number of national identity document or, in the case of foreigners: (...)."

In the same sense, article 41 TRLMRLC.

According to article 40 of the TRLMRLC:

"(...).

40.2 The data contained in the municipal register are confidential. Access to this data is governed by the rules governing citizens' administrative access to archives and public records and by Law 5/2002, of April 19, of the Catalan Data Protection Agency.

40.3 Without prejudice to the provisions of section 2 and without requiring the consent of the person concerned, the data of the register may be communicated to other public administrations that request it, when they are necessary to exercise the respective powers, and exclusively for the matters in which it is relevant to know the residence or address."

From these precepts it follows that the data of the Register are confidential, as recorded in the jurisprudence, among others, the sentence of the National Court of February 2, 2001: "**Los datos del Padrón son confidenciales, pues contienen datos propios of the scope of privacy of those registered, as can be inferred from the simple reading of article 16.2 of the Basic Law of Local Government, where the data that must be included in the Register are set out; and which are subject to Law 5/1992, with the only exception contained in article 11.3 of the Basic Law of Local Government, previously transcribed.**"

Neither the LRBRL nor the TRLMRLC provide, in general, for an individual to access data from the Register of other natural persons.

This, without prejudice to the fact that individuals may request registration certificates or flyers (arts. 53.1 and 61 RPDTEL, and art. 8.1.1 of the Resolution of January 30, 2015, of the President of the National Institute of Statistics and of the General Director of Coordination of Competences with Autonomous Communities and Local Entities, for which technical instructions are given to councils on the management of the municipal register), not only in relation to the personal data itself (art. 15 LOPD), but also, in certain cases, in relation to the data of third-party natural persons, as long as there is authorization from the affected person, or sufficient legal authorization.

In any case, it cannot be ruled out that individuals may have the right of access to register data of other natural persons, in certain cases, and with compliance with the requirements established by the regulations.

In this sense, the information provided does not specify whether the claimant is also registered in the domicile in relation to which he is requesting information (the estate object of inheritance), although this does not seem to be the case, given the information that it is in the file.

This is a relevant question, since, as this Authority has done (Opinions CNS 43/2017 and CNS 45/2017), the fact that it is one of the people registered in a home who requests registry information about the rest of the people registered, could provide sufficient legal authorization for the communication of certain data from the register. As this Authority has agreed, a person registered in a domicile can obtain from the City Council (administrative competent in the management of the Register), a document in which all the registered persons are listed for the purposes of accrediting the residence and usual address, purpose that would be framed within the provisions of article 16 LRBRL and 40 TRLMRLC. On this legal basis, the data protection regulations (art. 6 LOPD in connection with article 7.f) of the Data Protection Directive 95/46/EC or, where appropriate, with article 6.1. e) of Regulation (EU) 2016/679, of April 27, general data protection (RGPD), would lead to consider the communication lawful, when it is necessary to satisfy the legitimate interest of the data controller or of a third party, as long as the rights and interests of the affected persons do not prevail. Thus, the inclusion in the registration certificates or leaflets of the identification data relating to the names and surnames of all the people registered in the same address for the purposes of certifying cohabitation, at the request of one of these people, it would not be contrary to the regulations for the protection of personal data.

As this Authority has agreed in the aforementioned opinions, in the event that the applicant for the information is registered at the address in question, the information on the first and last names of the persons registered at the same address, and the information on the period in which they have resided in the same property constitutes personal information of the same applicant. Thus, knowing that a person shares a home with others would affect all the people who live there, so it would not seem logical to attribute to one of them (the registered applicant) the status of a third party before the eventual access to this information.

In any case, from the information in the file sent by the GAIP, it does not seem that this is the assumption being made, since at no time is it noted that the claimant is also registered in the address to which he refers (the farm inherited).

For all that has been said, given that the specific regime for access to Register data (LRBRL and TRLMRLC) does not, in general, provide for private individuals' access to other people's register data, it will be necessary to examine whether the regulations that regulates citizens' access to public information, could enable communication to the claimant of the requested information.

v

According to article 20.1 of the LTC, the right of access to public information (art. 2.b) LTC), is guaranteed to all people, in accordance with the provisions of the same LTC.

Taking into account the data contained in the Register (16.2 LRBRL and 41 TRLMRLC), which would not be particularly protected data (art. 7 LOPD, and art. 23 LTC), for the purposes of the aforementioned weighting, the criteria of article 24.2 of the LTC, according to which:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with **prior weighting of the public interest in disclosure and the rights of the affected persons**. To carry out this weighting, the following circumstances must be taken into account, among others:

a) The elapsed time. b)

The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people."

With regard to weighting, it must be taken into account, on the one hand, whether the communication can be relevant, in some sense, to the fulfillment of "purposes of public interest for the benefit of all citizens" that have to prosecute public administrations, institutions and public bodies with their functions, activities and services, for the benefit of all citizens, as set out in the Preamble of the LTC. Without prejudice to this, it is also necessary to examine, for the purposes of weighting, whether there is a particular interest or legitimate purpose on the part of the claimant, which could justify access to the information requested.

At this point, we note that article 22.1 LTC, establishes that:

"1. The limits applied to the right of access to public information must be proportional to the object and purpose of protection. The application of these limits must take into account the circumstances of each specific case, especially the concurrence of a **higher public or private interest that justifies access** to the information."

Therefore, we cannot rule out that, in those cases where there is a greater interest (either public or private), the weighting must allow access to information.

With regard to the possibility of a public interest, as can be seen from the regulations governing the Register (art. 59 RPDTEL and Resolution of January 30, 2015), the City Council must manage the Register, keep it updated, and verify the veracity of the information contained therein. In broad terms, access to certain register information could, in principle, be linked to a possible control or evaluation of the City Council's performance, since this is what manages the Register. However, it is not clear which public interest for the benefit of all citizens could be benefited or fulfilled by access (art. 24.2 LTC).

Without prejudice to this, it is necessary to examine whether there is a personal or particular interest that could be decisive for weighting purposes, and that could justify the communication of the requested information.

According to article 18.2 of the LTC, the exercise of the right of access to public information "(...) is not conditioned on the concurrence of a personal interest, is not subject to motivation and does not requires



the invocation of any rule." The right of access to public information can legitimately respond to particular interests (the Preamble of the LTC mentions the principle of "absence of interest and motivation in the demand for access").

The private or particular dimension of the right of access to public information is specified by allowing people to access information that may be of interest to their sphere of particular interests and in this sense, the purpose of access plays an essential role when weighing between the two rights at stake. In fact, the particular interest that can be pursued by the claimant with the access, is already provided as a weighting criterion in article 15.3.b) of the LT, by expressly establishing that it is necessary to take into consideration "The justification by applicants of their request in the exercise of a right (...)".

It is not necessary, therefore, that there is a personal interest, or that there is a specific motivation to request access, although the fact of knowing the purpose for which you want to access the information is an element to have taken into account when weighing up this interest or purpose and the right of the person or persons affected, holders of the data (in this case, the registered person).

As can be seen from the file, the claimant's claim is, at the outset, to be able to confirm and be certain of the registration of the affected person in the address, and to be able to know if there is a document signed by her father, authorizing the registration

In the case presented, it must be borne in mind that this claim comes from a person who is not only a direct relative of the previous owner (who could have authorized the registration), but who is also the heir and usufructuary. The claimant is also a direct family member - and, according to the notarial deed, legal representative - of the new owners of the property (their minor children).

This double condition of heir and usufructuary, and of a family member of the owners (of the previous and current ones), leads to consider that the claimant may have, unlike other people not related to the owner, a personal and direct interest in to know certain information relating to the registered status of third parties in the address in question.

Although it is not known the ultimate purpose for which the claimant requests the information (take certain legal actions, provide evidence in an ongoing legal procedure, file complaints, urge before the City Council a procedure for review or cancellation of the registrations, etc.), for the purposes of the weighting, it can be inferred that this purpose would probably have to do with the exercise of the rights and the defense of the claimant's own interests, or of his children, which may be recognized by the current regulations.

As an example, Law 29/1994, of November 24, on Urban Leases (LAU), recognizes the exercise of certain rights by owners, the exercise of which, in some cases, could require knowing certain information register

In any case, for the exercise of these or other rights that may correspond to the claimant himself or his children, it could be necessary to check whether a certain person is indeed registered in the estate, and to know whether this registration was made with the corresponding authorization of the previous owner.

In this sense, the information requested could allow the intended purpose to be fulfilled, since, as is clear from the regulations, the purpose of the Register is, precisely, to constitute proof of residence in the municipality and of habitual residence in this (art. 16.1 LRBRL), and its objective is to "record a fact" (section 2.3 Resolution of January 30, 2015), such as the actual fact of residence and registration.

In short, the information requested by the claimant would allow him to verify whether the registration exists, and whether it was carried out in accordance with the requirements provided for in the regulations, a purpose which, on the one hand, can be considered to contribute to a person who is heir and usufructuary, and relative of the owner, and of the other, could allow that person or others (the new owners) to exercise legitimate rights.

On the other hand, for the purposes of the weighting of article 24.2 LTC, it is necessary to take into account the effect that the communication of information could have on the rights of the affected persons (art. 3.e) LOPD), in this case, of the person who could be registered at the address.

At the outset, the claimant identifies the affected person with their first and last name, even quoting their ID number in the letter addressed to the Complaints Ombudsman, which is attached to the file. In addition, from the information provided, it seems clear that the claimant would be aware of the personal relationship of the affected person with her father.

Therefore, it is obvious that the claimant already knows, prior to the access request, not only the identity, but also certain personal circumstances of the person who could be registered at the address in question.

For the purposes of weighting, only the identity of the registered person - given that the claimant already knows - would be communicated to the claimant, the confirmation of the fact that this person is registered at home and, if applicable, the authorization of the previous owner.

In addition, as stated by the claimant in the letter addressed to the Ombudsman, dated September 21, 2017, "(...) this registration was admitted as evidence in a trial...". It follows from this that the affected person herself would have made public the fact of her registration in the court.

Regarding this, according to article 15.1 of the LT, access to specially protected data can be authorized without the consent of the affected person, when the latter "has clearly made the data public before access was requested". With more reason, since it is information that would not be considered specially protected, the fact that the affected person has already made public the fact of his registration in the judicial process mentioned in the attached documentation, must be taken into account in weighting effects.

Therefore, given that the requested information refers to facts previously known to the claimant, and that the affected party would have made public, it cannot be concluded that the communication to the claimant of the requested information must entail significant damage for the right to data protection of the affected person.

For all the above, given that the claimant is a direct relative, heir and usufructuary of the previous owner, that the purpose of the access would be to be able to confirm that the person in question is registered and to know if he had the corresponding authorization, and that it does not seem that the communication of information should lead to a significant prejudice for the right to data protection of the affected person, it must be concluded that the data protection regulations are not an impediment to communicating the requested information (registration certificate of the affected person and the corresponding registration authorization).

Finally, in relation to the impact on the rights or interests of third parties, it is not known that the people affected have been granted the allegation procedure provided for in article 31.1 LTC, so that it can be known if any specific personal circumstance that justifies the limitation of the right of access.

In this sense, it is necessary to emphasize the importance of transferring the request to these affected persons (the person or persons who would be registered at the address), as provided for in articles 31.1 and 42 of the LTC, either by of the City Council during the processing of the access request, or by the GAIP during the complaint procedure, so that it can be known if there is a specific personal circumstance that justifies the limitation of the right of access. For these purposes, the GAIP can use the data contained in the file to contact the affected persons or request the City Council to provide it with the data that can be used to contact them contact

## **conclusion**

The data protection regulations do not prevent the communication of the requested information (registration certificate of the affected person and registration authorization), given that the claimant is a family member, heir and usufructuary of the previous owner, who can claim a direct interest in confirming the registration and the corresponding authorization, and that it does not appear that the communication of information should lead to a significant detriment to the right to data protection of the affected person.

Barcelona, February 23, 2018