

Ref.: IAI 14/2018

Claim: 93/2018

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim for the denial of access to view and copy of a file from the Barcelona Territorial Labor Inspectorate

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 93/2018 submitted in relation to the denial of access to view and copy of an Inspection file Territorial Employment of Barcelona.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the Legal Advice I issue the following report.

Background

1. On February 21, 2018, a citizen submitted to the Barcelona Territorial Labor Inspectorate a letter in which she requested "access to the complete file" and "a copy of the file and the information on the my person" by virtue of the "right of access to information about my person" and the "legitimate right to self-defense", in relation to file no. service order 8/0005669/17.
2. On February 28, 2018, the Territorial Labor Inspectorate of Barcelona (ITB) denied access to the file and the copy of the documents incorporated to consider that the person claiming, in his capacity as complainant in the phase of investigation, is not considered an interested party and consequently cannot request the hearing and copy of the documents included in the file.
3. On March 22, 2018, a citizen filed a complaint with the GAIP, in which she requested access to all the requested information that is in the ITB file, as well as the rest of the information that is part of the content of the right of access regulated in article 15 of the LOPD.
4. On March 26, 2018, the GAIP requested from the Department of Work, Social Affairs and Family, the report in relation to the claim presented, the file relating to the request for access, the identification of the third parties who are affected by the access that is claimed, as well as the identification of the responsible body.
5. On April 19, 2018, the General Directorate of the Labor Inspection (DGIT) issues a report on claim 93/2018 in which it is concluded that it is a generic request not based on the Law 19/2014, of December 29, on transparency, access to public information and good governance; that the claimant does not have the status of interested party by virtue of Law 23/2015, of July 21, Ordinadora of the Labor Inspection and Social Security System, which as a specific sectoral norm establishes, in addition, a duty to secrecy and confidentiality to

officials in the field of inspection. Finally, it considers that access must be denied by application of the limits provided for in article 21.c of the LTC, when it establishes that the right of access may be denied or restricted if the knowledge or disclosure of the information entails a detriment to the secrecy or confidentiality in the procedures processed by the Public Administration, if the secrecy or confidentiality is established by a rule with the rank of law, because the aforementioned information is subject to the secrecy and confidentiality provided for specifically article 10 Law 23/2015, of July 21.

6. On April 24, 2018, the GAIP requested this Authority to issue a report in relation to the claim submitted.

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, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been 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 Regulations for the deployment of the LOPD, (RLOPD), approved by R. decree 1720/2007, of December 21). 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

The claim is filed against the denial of access to the information file or service order initiated by the Barcelona Territorial Labor Inspectorate as a result of the complaint submitted by the now claimant, due to alleged regulatory breaches by of the Consorci Parc de Recerca Biomédica de Barcelona, Administration of which the claimant is an employee. The purpose of the information file was to investigate whether the claimant had been exposed to unsustainable work pressure by his direct superior.

In the request for access made by the claimant to the Territorial Labor Inspectorate of Barcelona, it is stated that she requests "access to the complete file" and "copy of the file and the information about me" by virtue of the "right of access to information about my person" and the "legitimate right to self-defense", and, in the claim submitted to the GAIP as a result of the denial of the information, requests access to " all the information requested that works in the file of the ITB, as well as the rest of the information that forms part of the content of the right of access regulated in article 15 of the LOPD".

The report drawn up by the DGIT on the claim of a citizen, bases the denial of access on three grounds, firstly because the request is not based on Law 19/2014, of December 29, 2014, of transparency, access to public information and good governance (LTC), secondly "because the claimant does not have the status of an interested person under the specific law of application, which is Law 23/2015, of July 21 , organizer of the Labor Inspection and Social Security System", and finally based on the limit provided for in article 21.1.c of the LTC because "the information is subject to the secrecy and confidentiality specifically provided for in article 10 of Law 23/2015".

First of all, it must be taken into account that the lack or error in the legal basis of the right of access made by the person requesting it does not prevent the application of the general regime of access to information regulated by LTC.

On the other hand, the fact that the claimant does not have the status of an interested person under Law 23/2015, of July 21, authorizing the Labor Inspection and Social Security System, would not in itself be a cause of denial of access, to the extent that this is a sectoral regulation that regulates the legal status that the reporting person must have in the procedures initiated by the Labor Inspectorate as a result of his report and the rights that would derive from this position. The determination of whether the claimant has the right to access the information will be the result of applying the transparency regulations.

In addition, as stated in the report issued by the DGIT, at the time of requesting access to the file, the order of service to which the claim refers "was finalized with the archive of the proceedings and had not initiated the initiation of a sanctioning administrative procedure as no non-compliance or infringement of social norms had been established".

The focus of the consultation in these terms must be on what is established by the LTC, which in article 18 recognizes the right of people to "access public information, referred to in article 2.b, on an individual basis or in the name and representation of any legally constituted legal person", (paragraph 1), and that "the exercise of this right is not conditional on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of no rule" (section 2). The mentioned article 2.b) of the LTC defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of the its functions, including those supplied by the other obliged subjects in accordance with the provisions of this law".

The information contained in the file to which the claim refers, which as we have seen is part of a completed file, is "public information" for the purposes of transparency legislation and remains subject to the access regime provided for in this regulation which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law.

Articles 23 and 24 of the LTC regulate the limits on access to public information when the information sought to be accessed contains personal data. Article 24 establishes the regime applicable to access when the information to which you want to access contains personal data that is not considered to be specially protected and in its third section makes a specific provision for access to data referring to the same person requesting access. It thus establishes that "requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by data protection legislation of a personal nature."

It can be concluded that the LTC has opted for two systems of access to public information that contains personal data depending on whether the information contains data relating to third parties other than the applicant, or if it refers solely to the applicant person. In the first case, the general regime provided for in the LTC would apply with the corresponding limitations, while in the second, that is to say in the case that the requested information refers only to the person requesting the access, this request will be processed in accordance with the right of access provided for in the personal data protection legislation.

The request made by the claimant focuses its request on the information file or service order made by the ITB, making a special mention of the information on its person. It cannot be ignored, however, that the file to which you request access would also contain information from third parties.

Thus, among the information sent by the GAIP, there is the report issued by the Labor Inspectorate of Catalonia dated January 31, 2018, and sent to the claimant to exercise her right to know the state of the processing in accordance with article 20.4 of Law 23/2015, which contains the summary of all the inspection actions carried out, lists the applicable regulations, the facts noted and the measures taken. This report states the people who have been summoned to appear and who have been interviewed by the investigator of the case, as well as the documentation that has been reviewed, and which, according to the report, is made up of:

^{*} Distribution of tasks following the departure of the economic manager of the PRBB's Economy and Finance Area (December 2014)

- Emails related to the redistribution of the workspace (2016)
- Buofax sent by the worker to the General Administrator (29.01.2016)
- Bureau faxes sent to the worker by the instructor of the information file initiated by the company following the buofax of 29.01.2016 -
- Report of conclusions of the information file (11.10.2016)
- Allegations of the worker in the report of conclusions of the information file (19.10.2016)
- Certificate of participation of the prevention delegate, (...), in the training action "Types of harassment and intervention model" (07.11.2016)
- Emails related to training topics (2016)
- Document presented by the worker to the Labor Inspectorate explaining the facts reported (2017)
- The company's response to the worker's allegations to the conclusions of the information file (09.01.2017)
- HR response email to the worker's request scheduling the visit with health monitoring requested by this (13.01.2017)
- Minutes of the Labor Court of Catalonia (18.01.2017)
- Minutes of the meeting to carry out the psychosocial risk assessment (08.02.2017)
- Provisional description of jobs in the Economics and Finance Area (2017)
- List of tasks assigned to the worker (2017)
- Emails related to the facts investigated (2016-2017)
- HR email to the worker inviting her to participate in the qualitative part (interviews) of the psychosocial study (23.05.2017)

- External investigation report on an alleged situation of workplace harassment, prepared by ERGO LABORIS SL. (29.05.2017)
- Job evaluation: manager of the Administration and Management Area, carried out by the SPA (31.05.2017)
- Psychosocial risk assessment report of the company (06/04/2017)
- Protocol for prevention and action against situations of moral and sexual harassment and discrimination based on gender (June 2017)
- Constitution act of the anti-harassment Committee of the PRBB Consortium (12.06.2017)
- Medical notices of temporary incapacity of the worker (leaves and terminations)
- The worker's medical reports -
- Documentation in relation to the documents submitted by the worker to the Catalan Data Protection Agency of Catalonia (APDCAT) and the corresponding resolutions of this Agency. The last resolution is from 18.07.2017

- Documentation submitted by the worker to the Labor Inspectorate relating to her functions, tasks and responsibilities
- Certificates of fitness of the worker (2012, 2014, 2017)
- Definitive job description of the Economics and Finance Area (05.10.2017)
- Planning of preventive activity (05.10.2017)

To the access to the personal data included in this documentation, when they are referred exclusively to the person now claiming, as we have seen, it will apply, for temporary reasons, the Organic Law 15/1999, of December 13, on the protection of personal data (hereafter LOPD), as well as by Royal Decree 1720/2017, of December 21, which approves the Regulation for the deployment of the 'LOPD (hereinafter RLOPD).

In this sense, article 15 of Organic Law 15/1999, of December 13, on the protection of personal data (hereafter LOPD) establishes the following:

"1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.

2. The information can be obtained through the mere consultation of the data by means of visualization, or the indication of the data that is the subject of treatment through writing,

copy, telecopy or photocopy, certified or not, in a legible and intelligible form, without using keys or codes that require the use of specific mechanical devices.

3.(...)."

Article 23 of the LOPD allows access to be limited when dangers may arise for the defense of the state, public security, the protection of rights and freedoms of third parties or the needs of police investigations that are being carried out, as well as in those cases where access could hinder the fulfillment of tax obligations or the actions of the tax inspection.

Apart from these cases, article 30.2 of the RLOPD also provides for the possibility of denying access "in the cases in which a law or a rule of community law directly applicable or when this law or rule prevents the person in charge of treatment reveal to those affected the treatment of the data to which the access refers."

Consequently, from the point of view of personal data protection legislation, there is no rule with the rank of law that limits access under the terms of article 23 of the LOPD and 30.2 of the RLOPD, the person making the claim has the right to access all the information about him/her in the file processed by the Labor Inspectorate, including the medical reports about him/her.

This right, in accordance with article 27 of the RLOPD, covers "the information available on the origin of the aforementioned data". Consequently, the claimant could have access to the e-mails referred to in the labor inspection report, which contain opinions and statements in relation to the claimant, as well as knowing the identity of the people who made these statements, without detriment of taking into account, where appropriate, the right of opposition of these people in accordance with article 6.4 of the LOPD. It is worth saying, on the other hand, that this information from third parties is already in the claimant's possession to form part of the report of the Catalan Labor Inspectorate, dated January 31, 2018, which was sent to her.

In any case, it must be taken into consideration that, in order to guarantee the rights of the people who made statements and opinions in relation to the claimant and to ensure that they were able to exercise the aforementioned right of opposition, it was necessary that the Inspection of Labor had complied with the right to information at the time of the collection of their data, that is to say at the time of carrying out the interviews or collecting the relevant opinions (art. 5 of the LOPD and 13 of the RGPD). It would be prudent for the protection of personal data for the Labor Inspectorate to give a hearing and inform the people in the file that a request for access has been received by the claimant, and that it will proceed to the communication of the requested data, unless the result of this hearing procedure results in some circumstance that prevents access.

Therefore, taking into account the right of access provided for in data protection legislation, it does not appear that the claimant's access to his own personal data can be restricted.

III

Now, apart from the information relating to the person making the complaint, and the data relating to the origin of the information that refers to the person making the complaint, access to personal data of third parties contained in the file is will be governed by the criteria established in articles 23 and 24 of the LTC.

Thus, with regard to the information relating to the people who have intervened in the processing of the information file contained in the file, it is necessary to take into account the provisions of article 24.1 LTC, according to which:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights."

In accordance with this precept, the name and surname of the person who initiated or filed the complaint or the person investigating the file could be revealed. The intervention of these people is a consequence of the functioning of the Administration, and their identification would correspond to the functions attributed to the person in question by reason of their position.

With regard to the data of the reported person, it should be borne in mind that article 23 LTC establishes that: "requests for access to public information must be denied if the information sought to be obtained contains data specially protected personal data, such as those relating to ideology, trade union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not lead to a public reprimand to the offender, unless the affected party expressly consents to it in writing that must accompany the request."

In the case at hand, despite the fact that, as stated in the report of the DGIP, the service order to which the claim refers was finalized with the archive of actions and had not originated the initiation of a sanctioning administrative procedure, the fact that the investigation of the facts has not resulted in the initiation of a sanctioning procedure, does not imply that the information about the reported person is not related to the commission of administrative violations. Thus, it must be borne in mind that the mere fact of providing information about a person who has been investigated for facts that could constitute an administrative infraction, could cause serious damage to the privacy of the person affected, especially considering consideration of the nature and seriousness of the facts investigated. This means that, despite the doubt that may arise regarding its inclusion in the access regime of article 23 LTC, a reasoned weighting between the different rights and interests at stake that should be done in accordance with the article 24.2 LTC, would also require us to take into account this circumstance that could lead to a denial of access to this information.

Finally, remember the importance of complying with the obligation to transfer access requests to those people whose rights and interests could be affected by access so that they can express what they think is appropriate in defense of their rights and interests, in accordance with article 31.1 LTC which establishes, "1. If the public information request

may affect the rights or interests of third parties, in accordance with the provisions of this law, in the event that the potential affected are identified or are easily identifiable, they must be given the transfer of the request, and they have a period of ten days to submit allegations if these can be decisive for the meaning of the resolution."

conclusion

From the point of view of the legislation on the protection of personal data, the person making the claim has the right to access all the information about him/her that appears in the file processed by the Barcelona Territorial Labor Inspectorate, including the reports medical records about your person and the e-mails that contain opinions and statements in relation to the claimant and the identity of the people who made them, without prejudice to taking into account, where appropriate, the right of opposition of these people in accordance with article 24.3 of the LTC and 15 of the LOPD.

Access to personal data of third parties contained in the file will be governed by the criteria established in articles 23 and 24 of the LTC, according to which access may be given to information relating to persons who have intervened in the processing of the file, due to his status as a public administration employee, in accordance with article 24.1 of the LTC, and it will be necessary to deny access to the data of the person reported in accordance with article 23 of the LTC.

Barcelona, May 17, 2018