

Ref. : IAI 19/2018

**Claim: 98/2018**

**Report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to a claim submitted by a Group Municipal for the denial of access to the list of the entry and exit register of documents of the municipal corporation**

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 the claim presented by a councilor of a municipal group against the City Council, for denial of access and consultation of the index of the entry and exit register of documents for the months of January and February 2018, to exercise management, control and inspection functions.

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

**Background**

1. On March 12, 2018, the claimant, who is a councilor of the municipal group, submitted a letter to the City Council in which he requested a list of the entry and exit register of council documents, for the months of January and February 2018, to exercise management, control and inspection functions.
2. On March 16, 2018, the City Council denied the request for access presented by the councilor.
3. On April 4, 2018, the councilor submitted a complaint to the GAIP in which he reiterates the request for access to the requested documentation.
4. On April 12, 2018, the GAIP requests the City Council to issue a report in relation to the claim presented. The file addressed to this Authority contains a copy of the Report of the General Secretary of the City Council, dated March 15, 2018, on the request for access to information by the Municipal Group.
5. On May 11, 2018, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, in relation to the claim presented by the councilor of the City Council.

## 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 or of any other type that concerns identified or identifiable natural persons" without disproportionate efforts (article 5.1 f) and 5.1 o) of the Regulations for the deployment of the LOPD (RLOPD), approved by R. decree 1720/2007, of 21 December). 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 (hereafter LTC).

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

Before analyzing the merits of the claim, it is appropriate to determine the legal system applicable to the request.

The first additional provision, section two, of the LTC establishes that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law."

In the case at hand, the person making the claim has the status of councillor. Therefore, the provisions established by the local regime legislation are applicable, mainly Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) and Legislative Decree 2/2003, of April 28, by which the revised text of the Municipal Law is approved and of

local regime of Catalonia (TRLMRLC), regarding the access of councilors, county councilors or provincial deputies to municipal information.

This is without prejudice to the fact that the person making the claim must be granted at least the same guarantees in terms of access to information - including the possibility of lodging a claim with the GAIP - as other citizens who do not have this condition of elected office, given the supplementary application of the LTC (DA1a. section 2).

As this Authority has done on previous occasions (among others, reports IAI 30/2017, IAI 10/2017, IAI 7/2017, IAI 35/2016 or IAI 1/2007, which can be consulted on the website <http://apdcat.gencat.cat>), the local regime legislation (article 77 LRBRL and article 164.1 TRLMRLC), recognizes a right of access to all elected positions, regardless of whether they are in the government team or in the 'opposition, to the information that their local corporation has and that may be necessary for the exercise of the functions that correspond to them.

Thus, article 77.1 of the LRBRL establishes that "all members of the local Corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the Corporation's services and resulting necessary for the development of its function.

The request to exercise the right contained in the previous paragraph must be resolved motivatedly in the five natural days following the one in which it had been presented."

The TRLMRLC pronounces itself in the same sense by providing, in its article 164.1, that "all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."

However, this does not mean that this right of councilors is an absolute right. If it conflicts with other rights, it will be necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

This has come to be recognized by the local regime legislation itself. The aforementioned article 164 of the TRLMRLC, in regulating the conditions for the exercise of the right of access to municipal information by the members of the corporations (sections 2 and 3), establishes, as a possible basis for denying the request with reasons 'information, that "the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's own image" (section 3, letter a)), but obviously it will also be necessary to take into account other fundamental rights that may be affected by the request for information.

Likewise, from local regime legislation and from the jurisprudence of the Supreme Court, it follows that councilors cannot be required to, in order to access municipal information, explain or substantiate the purpose of their request, since the reason for their request must be understood as implicit in the exercise of their functions as councilors, who are responsible for the control and supervision of the governing bodies of the corporation, as explained in the Article 22.2 a) of the LRBRL.

Since the exercise of the councilor's right of access could lead to a limitation of the fundamental right to the protection of personal data (Article 18.4 CE), it will be necessary to see if it is a proportional limitation, since, according to repeated doctrine of the Constitutional Court, the limitation of fundamental rights can only occur from

provided way (SSTC 11/1981, 57/1994, 66/1995, 11/2006, 206/2007, among others).

It should be borne in mind that the elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to control the actions of the corporation, the control, analysis, study and information of the services of the City Council, for their control task and to document themselves for the purposes of adopting decisions in the future (among others, STS of March 29, 2006).

For all this, it will be necessary to examine the terms in which the councilor requests this access in order to facilitate the weighting that the City Council, as responsible, must carry out in order to assess the relevance of access to certain personal data, based on the principle of data quality.

### III

With regard to the substance of the claim, this Authority has previously ruled on councilors' access to the entry and exit register of documents from municipal corporations with respect to the regulations on the protection of personal data, among others in opinions CNS 29/2018, CNS 10/2017, CNS 80/2016, CNS 24/2015. The legal considerations of which are fully applicable to the case at hand.

From the point of view of data protection regulations, it is necessary to take into account the principle of data quality (article 4 LOPD), which implies, on the one hand, that access to municipal information, which includes certain personal data, without the consent of those affected, must necessarily be linked to the exercise of the functions that correspond in each case to the councilor in question, in the terms provided for in the aforementioned local regime legislation. And, on the other hand, that it is justified, exclusively, the processing of the essential data to fulfill the purpose.

Therefore, it entails carrying out, in each specific case, a weighting exercise in order to evaluate the implications that the exercise of the councilor's right of access to information may have for the rights of the people affected, such as the right to the protection of personal data.

For the purposes that concern us, it is necessary to know what information is contained in the Register of entry and exit of a City Council, in this sense, article 16.1 of Law 39/2015, of 1 October, on the common administrative procedure of public administrations (Law 39/2015) provides that: "the electronic register of each Administration or body must guarantee the existence, in each settlement that is made, of a number, heading expressive of its nature, date and time of presentation, identification of the interested party, sending administrative body, if applicable, and person or administrative body to which it is sent, and, if applicable, reference to the content of the document being registered" (...).

In the same sense, the Regulation on the organization, operation and legal regime of local entities, approved by Royal Decree 2568/1986, of November 28, applicable to the City Council in the absence of an organic regulation of its own that regulates it, in its article 153 provides that:

"1. The entries in the Registry will contain an exact reference to each of the documents that are sent from the local offices or that are received in them and, for the purpose of entry, the following points must be included:

- a) Correlative order number.
- b) Date of the document, with expression of the day, month and year.
- c) Date of entry of the document in the Registry offices.
- d) Provenance of the document, with indication of the authority, corporation or person who signs it.
- e) Extract, review or brief reference of the matter included in the body of the registered writing.
- f) Business, Section or department to which your knowledge corresponds.
- g) Resolution of the matter, date and authority that dictated it, and
- h) Observations for any annotation that may be appropriate in any given case. (...)"

Therefore, a prior analysis should be made in relation, among others, to the greater or lesser degree of concreteness with which the information is entered in the Register, for example, in relation to the use of more or less generic or descriptive typologies about the matter or reason for which a letter is submitted to the Registry, in order to facilitate subsequent weighting in the event of requests for access to information by councillors.

Given that, according to the information available, the claim focuses on the access request relating to access to the Register of entries and exits of documents of the City Council for the months of January and February 2018, and which corresponds to a total of 2157 settlements, it is understood that this is a generic and indiscriminate request, since, although it limits the time period for which access is requested (January and February 2018), makes no mention of the area of municipal action that is of interest (works and services, education, human resources, etc.) and/or the possible subjects affected, among other aspects.

Thus, in this case, given the terms in which the query is formulated, it does not seem that it can be concluded that a generalized and indiscriminate access to the information contained in the entry and exit register of documents is justified from the point of view of right to data protection.

Otherwise, it should be pointed out that the City Council should particularly value the possibility of facilitating access to the information in the Entry Register after personal data has been dissociated. This possibility could be relevant in those cases in which, without including specific data that can identify or make identifiable natural persons, following the terms of article 3.f of the LOPD, a satisfactory response can be given to the request made.

If this is the case, it should be borne in mind, so that the dissociation could be considered sufficient for the purposes of the LOPD, that with the application of the dissociation process (article 3.j) LOPD) it would be really impossible to associate certain data with a certain individual. It is considered, in this sense, that the affected person is not determinable or identifiable when his identification requires disproportionate terms or activities (article 5.1 o) RLOPD).

In this way, it would be possible to facilitate the exercise of the right of access to municipal information that the local regime legislation recognizes to the councilor and, at the same time, respect the fundamental right to the protection of personal data of those potentially affected.

#### IV

Finally, it should be remembered that whenever the councilors' access to personal data is carried out due to the functions entrusted to them as such, they must be governed, apart from the duty of reservation imposed by the regime regulations local (article 164.6 TRLMRLC), and for the duty of secrecy (article 10) established in the LOPD.

Thus, article 164.6 of the TRLMRLC provides: "the members of the corporation must respect the confidentiality of the information to which they have access by virtue of their position if the fact of publishing it could harm the interests of the local entity or third parties."

According to this article, the members of the Corporation have the duty to keep a reservation in relation to the information provided to them to make possible the development of their function.

This duty of secrecy is also explicitly provided for in article 10 of the LOPD, according to which:

"The person in charge of the file and those who intervene in any phase of the processing of personal data are obliged to professional secrecy with regard to the data and the duty to save them, obligations that remain even after the end of their relations with the owner of the file or, where appropriate, with its manager."

Therefore, if the subsequent use of the information to which the councilor would have accessed by reason of his position involved disclosing the personal data contained therein to third parties, without the consent of the affected person or the corresponding legal authorization (article 11 LOPD), we could also find ourselves faced with an action not adjusted to data protection regulations, even though the access was originally considered legitimate.

#### **conclusion**

The data protection regulations prevent the claimant's access to the information contained in the entry and exit register of documents, as this is a generalized and indiscriminate access to all information. This is without prejudice to the fact that access to the information can be given in a dissociated manner, or that with respect to specific requests access can be given after a weighting resulting in the justification of the measure.

Barcelona, May 28, 2018