

Ref.: IAI 28/2018

Claim: 212/2018

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 plots or properties exempt from paying IBI.

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 212/2018 submitted in relation to the denial of access to plots and/or properties exempt from paying IBI.

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 adviser, I issue the following report:

Background

1. On May 18, 2018, a citizen requests the following information from the City Council of (...) regarding the properties that do not pay IBI in the municipality: address of the properties, name of the owner, reason for the exemption, amount of each tax and estimated value of the amount that is no longer collected.
2. On June 5, 2018, the Deputy Mayor of the City Council of (...) decided to partially estimate the request for access to public information submitted by the citizen and to transfer the report of the administrative head of levies on the immovable property of that municipality.

This report states that, in accordance with article 51 of Royal Legislative Decree 1/2004, of March 5, which approves the revised text of the Real Estate Registry Law, the identification data of holders registered in the cadastre, as well as the cadastral value and the cadastral values of the land and, in the case of individualized real estate, are considered protected data.

It is noted that the estates that do not pay IBI in the city are those affected by articles 61.5 and 62 of the Royal Legislative Decree 2/2004, of March 5, which approves the revised text of the Law regulating local finances and the number of properties affected in 2018, their cadastral references and the total amount of the corresponding IBI is attached to the report.

3. On June 12, a citizen presented to the GAIP a claim against the City Council of (...) in which he stated that the City Council had only provided him with the cadastral reference of properties exempt from IBI without the address, who have not explained the concept for which they do not pay, the amount that each property or plot of land should pay, nor the owner thereof.

4. On June 18, 2018, GAIP requests from the City Council a report in relation to the claim, the complete file, the identification of the third parties affected, as well as the body responsible for processing the claim. In response to this request, the City Council sent the requested documentation and the corresponding report on July 2, 2018. In this report, it is alleged that the amount that should be paid cannot be provided each property since the amount of the fee in the IBI receipts is a percentage of the cadastral value and providing this data allows, with a simple calculation, to obtain the cadastral value. Likewise, the information provided initially is expanded by specifying the concepts for which the different farms are exempt from payment and indicates the number of farms that are owned by the City Council of (...), other administrations, entities religious and others.

5. On July 20, 2018, GAIP requests this Authority to issue a report in relation to Complaint 212/2018, submitted.

Legal Foundations

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.

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 affected persons, understood as "all information about an identified or identifiable natural person ("the interested party »); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person", in accordance with the definition of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), applicable from May 25, 2018 (article 99), in the same line of the LOPD, and the Implementing Regulation (RLOPD) -which were the applicable data protection rules at the time of submitting the information request-.

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

Before analyzing the merits of the claim, it should be noted that, although the RGPD has been fully applicable since May 25, 2018 (article 99), in this case the LOPD and its Implementing Regulations govern (RLOPD) given that this was the current regulation at the time the access request was made (May 18, 2018).

Point out, however, that the conclusions of this report would not vary if the new European regulation were the standard of reference.

The claim that is the subject of this report is presented against the partial denial of access to information relating to properties exempt or not subject to the payment of property tax in the municipality of Tarragona.

Specifically, the access request required the following information:

- o Address of each property
- o Owner
- o Reason for exemption
- o Amount that each property would have to pay if not exempt
- o Estimated value of what the City does not collect

In accordance with article 3.i) of the LOPD, any disclosure of data to a person other than the interested party constitutes a transfer or communication of personal data. In general, personal data can only be communicated to a third party for the fulfillment of the purpose directly related to the legitimate functions of the transferor and transferee, with the prior consent of the interested party. However, article 11.2 a) the LOPD enables the transfer of personal data without the consent of the interested party when this is covered by a rule with the rank of Law.

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1).

The mentioned article 2.b) 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 its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law".

State Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (definition of public information).

However, in accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically, article 21.2 LTC establishes that "the right of access to public information can also be denied or restricted if the information has the status of protected and this is expressly established by a rule with the rank of law".

Likewise, the second section of the first additional provision 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."

III

Article 60 of Royal Legislative Decree 2/2004, of March 5, which approves the Revised Text of the Local Finance Regulatory Law (LRHL) defines the IBI as "a direct tax of a real nature that taxes the value of real estate". Therefore, the IBI register must collect the necessary information in order to manage the collection of said tax.

The taxable event of the IBI is the ownership of rights on rural and urban immovable property (art. 61.1 LRHL); the liable subjects, as taxpayers, are the natural and legal persons and the entities that hold the ownership of the right that, in each case, and in the terms of Law 58/2003, of December 17, general tax law (LGT), is constitutive of the taxable event (art. 63 LRHL).

Article 61.5 of the LRHL establishes the cases of non-subjection to the IBI while article 62 of the same legal text lists the estates that are exempt from its payment.

Thus, the management and collection of the IBI requires the processing of data and information of various kinds, among others, personal data of the obliged subjects, with regard to which, when they are natural persons, the principles and guarantees of the data protection regulations.

It should be noted that in the event that the owners of the properties are legal entities, the personal data protection regulations would not be applicable and therefore would not prevent access from the point of view of this right. However, we cannot fail to add that, beyond the data protection regulations, the information requested, even if it refers only to legal entities, is subject to enhanced protection by the regulations applicable sector, as we will see below.

Part of the information that the Councils process in relation to the management of the IBI, is obtained from the cadastre information (information, among others, on the identification and cadastral value of the properties), and other documents prepared by the General Directorate of the Cadastre, taking into account the provisions of articles 60 et seq. of the aforementioned LRHL.

With regard to cadastral information, article 51 of Royal Legislative Decree 1/2004, of March 5, which approves the revised text of the Real Estate Registry Law (LC), provides the following:

"For the purpose of the provisions of this title, the name, surname, company name, identification code and address of those registered in the real estate register as owners, as well as the cadastral value and the cadastral values of the land and, where appropriate, of the construction of individualized real estate."

Therefore, according to this rule, the first and last name and address of the owners of real estate, among other data contained in the cadastre, as well as the cadastral value, are considered protected data. Accordingly, this provision limits the accesses that may occur to this information.

Although article 52.1 of the Land Registry Law provides that "everyone can access the information on the properties they own and the non-protected data information contained in the real estate registry", on the other hand, with regard to access to protected cadastral information, we must refer to the provisions of article 53 of the Cadastre Law, according to which:

"1. Access to protected cadastral data can only be made through the express, specific and written consent of the affected person, or when a law excludes such consent or the information is collected in any of the following cases of legitimate and direct interest: a) For the execution of research projects of a historical, scientific or cultural nature sponsored by universities or research centers, as long as they are qualified as relevant by the Ministry of Finance. b) For the identification of the estates, by the notaries and registrars of the property and, in particular, for the compliance and execution of what is established in title V. c) For the identification of the adjacent plots, with exception of the cadastral value of each of the properties, for those listed in the real estate cadastre as owners. d) For the holders or co-holders of rights of real transcendence or lease or partnership that are issued on real estate registered in the real estate cadastre, with respect to the aforementioned real estate. e) For the heirs and successors, with respect to the real estate of the causer or transferor that is registered in the real estate register. (...)"

Therefore, according to the provisions of the applicable sectoral regulations (Cadastre Law), access to the protected data of the cadastre is a restricted access, and is only allowed if the consent of the holders is obtained or it is requested in based on one of the cases regulated in article 53, cited.

On the other hand, it must be taken into account that the exemption data on a certain tax are data of a tax nature. Although from the point of view of data protection regulations, tax data is not among the specially protected data (art. 7 LOPD), it should be taken into account that article 95 of the LGT establishes the reserved nature of these data:

"1. The data, reports or antecedents obtained by the tax administration in the performance of its functions are reserved and can only be used for the effective application of the taxes or resources whose management is entrusted and for the imposition of the sanctions that are appropriate, without being able to be transferred or communicated to third parties, unless the purpose of the transfer is: (...)

This precept then lists a series of exceptions (thirteen) in which this assignment is allowed. These are, however, taxed cases of transfer of data to other administrations or authorities for the exercise of their respective powers, and they are formulated in a restrictive manner. Among these exceptions, there is no provision for the possibility of transfer to individuals, either for journalistic purposes (as stated by the claimant in the written submission) or of any other type.

Section 3 of article 95 LGT reinforces this prohibition when it provides that "the tax administration must adopt the necessary measures to guarantee the confidentiality of tax information and its appropriate use", and that "all authorities or officials who have knowledge of these data, reports or antecedents are obliged to the strictest and complete secrecy regarding them, except in the cases mentioned. Regardless of the criminal or civil responsibilities that may result, the breach of this particular duty of secrecy is always considered a very serious disciplinary offence.

Article 95 LGT and the reservation obligation it imposes is the correlate of the right to confidentiality recognized by article 34.1.i) of the LGT to all taxpayers, whether natural or legal persons. According to this precept, taxpayers have, among others, the "Right, in the legally provided terms, to the reserved nature of the data, reports or records obtained by the tax administration, which can only be used for the application of the taxes or resources whose management is entrusted and for the imposition of sanctions, without them being transferred or communicated to third parties, except in the cases provided for by law".

The prevalence of the specific regulation of both the Cadastre Law and Article 95 LGT over the general regulation of the LTC derives from the first additional provision, section two, both of the Basic State Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), as from the LTC itself.

In this sense, the National Court has pronounced in the sentence SAN 251/2017 of February 6, 2017 when it states the following:

"(...)

But it is necessary to determine, if the reserved character given by the legislator to the information obtained by the Tax Agency, in article 95 of Law 58/2003 must be understood, which restricts the right to obtain information on these data.

Law 58/2003 is of the same ordinary rank as Law 19/2013.

It is a restrictive declaration of the right to information that is outside the regulation of Law 19/2013, but that is found in a current Law of the Spanish Legal System, which specifically regulates the tax regime and the obtaining of data of individuals, physical and legal persons, to be able to carry out the function entrusted to the fiscal bodies.

It is in force because it has not been expressly repealed by a subsequent Law, and in principle it does not seem incompatible with the regulation established in Law 19/2013, looking at the First Additional Provision of Law 19/2013, the possible connection to be able to apply this limitation .

(...)

Therefore, we find that there is a specific and valid regulation, not incompatible with the regulation of the Transparency Law, of access to information that works in the Tax Administration and that will be governed by its specific regulations, and by this Law with character supplementary

(...)"

In this way, by application of the LGT, the personal data that must be treated by the city council as responsible for the management of the IBI are reserved and can only be the subject of communication in the cases specified by the LGT itself , in a taxed form, which are exceptions to the reserved nature of data or information of tax importance.

On the other hand, as we have seen, the LC is a norm with the rank of law that provides for a specific regime of access that also determines the protected nature of the data of the name and surname and the address of the owners of immovable property, as well as the value cadastral of these properties.

Taking this into account, it would be contrary to data protection regulations, and to the privacy expectations that the owners of these properties may have, to provide information relating to the address of the properties, name of the owner, reason for the 'exemption, amount of each tax and estimated value of the amount that is no longer collected. Access could only be carried out with the express and written consent of the persons affected or in the event of any of the other circumstances provided for by the aforementioned rules.

This harms us, of course, if anonymized information can be provided, about the number of properties affected, income left uncollected or other circumstances so that this information cannot be linked to specific people.

conclusion

Access by the claimant to the personal data of the owners of properties exempt or not subject to IBI (name and surname, whose properties they own, the address and the amounts they would have to pay in case of 'be subject or not exempt from that

tax) would not comply with data protection regulations, unless the access request is accompanied by the express written consent of the affected persons.

Barcelona, 31 August 2018

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