

Ref.: IAI 31/2018

## **Claim: 242/2018**

### **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 presented by an association for the partial denial of access to the complete invoices relating to the hiring of an architect by a city council**

The Commission for Guaranteeing the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on claim 242/2018 presented by an association in relation to the partial denial of access to the full invoices relating to the hiring of an architect by a council.

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 January 31, 2018, an association presents a letter to the City Council of (...) in which it requests access to invoices from the architects hired by the city council from 2008 to 2018 with the quadrant of the total amount of the invoices.
2. On February 26, 2018, the City Council informs the association that they can go through the Citizens' Services Office to collect copies of the requested invoices in which the excessive data has been hidden.
3. On April 23, 2018, the association again presents a letter to the City Council of (...) in which it states that it does not agree with the information provided by the city council and requests access to a list of all the architects who have worked for the city council and the total amount of the billing for each of them from 2008 until the time of submitting the application.
4. The City Council, based on article 28 of Law 19/2014, of December 29, on transparency, access to public information and good governance requires the applicant entity, by letter dated 30 of April 2018, which specifies the terms of the application. The requests for information were reiterated on May 3 and 30, 2018 and were answered in the same terms by the city council in writing dated May 7 and June 13, 2018.
5. On June 28, 2018, the association filed a complaint with the GAIP against the City Council of (...) for the partial denial of access to the requested information, in which it requests the access to an architect's full invoices.
6. On July 6, 2018, the GAIP requests from the City Council of (...) a report on the claim, the complete file, the identification of the third parties affected

and the person responsible for processing. In the report issued by the city council, it is stated that partial access to the requested invoices would already have been granted in accordance with Resolution 361/2017, of November 20, of the GAIP.

7. On July 23, 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.

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.

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.

Before analyzing the merits of the matter, it should be noted that although the new RGPD has been in force since May 25, 2018 (article 99), in this case it is governed by the LOPD and its regulation of deployment (RLOPD), given that this was the current regulation at the time the access request was made (January 31, 2018).

It should be borne in mind, however, that the conclusions of this report would not vary if the new European regulation were the standard of reference.

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

In accordance with article 3.i) of the LOPD, any disclosure of data made 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.

Law 19/2014, of 29 December 2014, on transparency, access to information and good governance (LTC), aims to regulate and guarantee the transparency of public activity.

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 entity requesting access would be legally constituted and endowed with its own legal personality for the purposes of being able to exercise the right of access recognized in this article 18 of the LTC.

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 its functions , including that supplied by the other obliged subjects in accordance with the provisions of this law".

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 (public information) ).

The information related to the procurement files, such as the invoices that are the subject of the claim on which this report is requested, is "public information" subject to the access regime provided for in the transparency legislation.

However, in accordance with article 20 and s. of the LT, the right of access to public information can be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information that contains personal data, it is necessary to assess whether the right to data protection of the affected persons would justify or not the limitation of the right of access to public information regulated in the Law 19/2014 invoked by the applicant.

## III

The claim is lodged against the limitation of access to certain personal data of invoices relating to the hiring of architects by the City Council of (...). Is

requests access to the full content of the invoices for the services provided by a specific architect.

In accordance with additional provision 32a of Law 9/2017, of November 8, on public sector contracts, by which the Directives of European Parliament and of the Council 2014/23/UE and 2014/24/EU, of February 26, 2014 (hereinafter, LCSP):

*"1. The contractor will have the obligation to submit the invoice issued for the services provided or goods delivered to the corresponding administrative register for the purposes of its referral to the administrative body or unit responsible for processing it.*

2. In the forms of administrative clauses for the preparation of contracts that are approved from the entry into force of this provision, the identification of the administrative body with competences in public accounting matters will be included, as well as the identification of the body of contracting and of the recipient, which must be included in the corresponding invoice. (...)"

Point out that with respect to minor service contracts (these are those with an estimated value of less than 15,000 euros) the processing of the file only requires the justification of the need for the contract, of the non-use of it to avoid the application of the general contracting rules and that he has not entered into contracts with this contractor for an amount greater than that provided for in the regulations; the approval of the expenditure and the incorporation of the corresponding invoice (article 118 LCSP). In this case, the invoice would be the document certifying the contract itself.

Article 6 of Royal Decree 1619/2012, of November 30, which approves the Regulation regulating invoicing obligations, determines the content of the invoices, in the following terms:

"1. All invoices and their copies will contain the data or requirements mentioned below, without prejudice to those that may be mandatory for other purposes and the possibility of including any other mentions: a) Number and, if applicable, series. The numbering of the invoices within each series will be  
correlative

(...) b) The date of its dispatch. c) Full name and surname, reason or corporate name, both of the person obliged to issue an invoice and of the recipient of the operations. d) Fiscal Identification Number attributed by the Spanish Tax Administration or, as the case may be, by that of another European Union Member State, with which the operation has been carried out by the person obliged to issue the invoice. (...) e) Domicile, both of the obligee to issue the invoice and of the recipient of the operations. (...) f) Description of the operations, submitting all the necessary data for the determination of the taxable base of the Tax, as defined by the articles

78 and 79 of the Tax Law, corresponding to those and their amount, including the unit price without tax of said operations, as well as any discount or discount that is not included in said unit price. g) The tax rate or tax rates, if any, applied to the operations. h) The tax quota that, where appropriate, is passed on, which must be recorded separately. i) The date on which the operations that are documented were carried out or on which, where applicable, the advance payment was received, provided that it is a different date than the invoice issue date. (...)"

And article 7 of Royal Decree 1619/2012, of November 30, which approves the Regulation regulating invoicing obligations, determines the content of simplified invoices, establishing that:

"1. Without prejudice to the data or requirements that may be mandatory for other purposes and the possibility of including any other mentions, the simplified invoices and their copies will contain the following data or requirements: a) Number and, if applicable, series. The numbering of the simplified invoices within each series will be correlative. (...) b) The date of its dispatch. c) The date on which the operations that are documented were carried out or on which, where appropriate, the advance payment was received, as long as it is a date other than the date of issue of the invoice. d) Fiscal Identification Number, as well as the name and surname, reason or full corporate name of the person obliged to issue it. e) The identification of the type of goods delivered or services provided. f) Tax type applied and, optionally, also the expression "VAT included".

Likewise, when the same invoice includes operations subject to different tax types of Value Added Tax, the part of the taxable base corresponding to each of the operations must be specified separately. g) Total consideration. (...)"

#### IV

As regards the scope of material application of the LOPD, this extends to natural persons or groups of natural persons, identified or identifiable (article 3.a) of the LOPD on which it is intended obtain personal data, and not information relating to legal entities (article 2.2 RLOPD). Therefore, the right to the protection of personal data would not be an impediment to facilitate access to invoices that only contain information on legal entities.

It could also be considered whether access to invoices in which the creditors are individual entrepreneurs holding the status of traders, industrialists or shipping companies would be left out (article 2.3 RLOPD). But it is necessary to make a restrictive interpretation of this exclusion in order to avoid that

certain cases of personal data processing fall outside the control of data protection regulations, as this Authority has stated in previous reports (IAI 27/2016 among others).

Therefore, the case provided for in article 2.3 of the RLOPD, which is outside the data protection regime, must be understood as referring exclusively to individual entrepreneurs who have the status of traders, industrialists or shipping companies and only when the data of the individual entrepreneur are used in a context that we could describe as strictly professional. Although the dividing line is certainly very thin, it is always necessary to make an assessment based on the specific case.

However, as this Authority has stated in previous reports (among others, in the IAI report 27/2016), the interpretation that is made of these assumptions of the RLOPD must not contradict what can be deduced of the LOPD and, therefore, a restrictive interpretation of this precept must be made in order to prevent certain cases of personal data processing from falling outside the control of data protection regulations, as has collected, in the case of architects, several judicial pronouncements (among others SSAN 21.11.02 and 29.03.06 or the STS 20.02.07).

In the case analyzed, it does not seem that the affected professional (the architect) has the category of industrialist for the purposes of applying the exception provided for in the RLOPD. But in addition, even in the case that due to the activity it carries out it could be considered within this category, for the purposes of the RLOPD, this does not mean that as such it is excluded from the sphere of protection of the LOPD.

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In the case we are dealing with, the content of the invoices that are claimed is not available, however, in accordance with the content established in the aforementioned articles 6 and 7 Royal Decree 1619/2012, of November 30, which approves the Regulation by which invoicing obligations are regulated, in general, it is foreseeable that these contain the data corresponding to the invoice number (art. 6. a); the date of issue (art. 6.b); the name and surname, the name or full company name, both of the person obliged to issue the invoice and of the recipient of the operations (art. 6.c)); the NIF (art. 6.d); the address of the obligee and the addressee (art. 6.e); the description of the operations, including all the data necessary to determine the VAT taxable base, and its unit amount without tax, as well as any discount or rebate not included in this unit amount (art. 6 .f); the tax rate applicable to each operation (art. 6.g); the tax quota that can be passed on (art. 6.h ig)); the date on which the operations that are documented have been carried out, or on which the advance payment has been received when it is different from the date of issue of the invoice (art. 6. i)) and the reference to the regulatory provision in case the operation is exempt from VAT.

Considering that the information that may be included in the invoices would not be considered as specially protected data (art. 23 LTC and art. 7 LOPD), it is necessary to apply what is provided in article 24.2 LTC: ". access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the people affected. 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. (...)."

Noting that in matters of procurement, article 13.1.d) of the LTC obliges the Administration to publish "d) The contracts signed, with the indication of the object, the amount of the tender and award, the procedure used to contract and the identity of the successful bidder, the duration, the number of bidders, the award criteria, the comparative table of offers and the respective scores, and also the agreements and technical reports of the process of recruitment. This information must be up-to-date and refer to at least the last five years." The obligation to publish covers all contracts, including minors, and regardless of whether the successful tenderer is a legal or natural person.

Therefore, this precept would enable access by citizens to the identity of the successful bidder, the object of the contract and the amount of the tender and award, among other data.

In the case of the claim that is the subject of this report, and based on the data available, the claimant has requested access to the full content of the invoices issued by an architect, who is assumed to be the winner of various tenders carried out by the 'Town council claimed.

In accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses what is the purpose he pursues or the reasons for which he is interested in knowing the information, adds a very important element to be taken into account as a weighting criterion between the public interest in the disclosure of information and the rights of the persons affected (art. 24.2.f).

The person making the claim represents an entity, which, according to the information on the municipal website, aims to "look for signs of irregularities in public administrations or political parties, to bring them to the attention of the relevant authorities for the clearing of responsibilities and ensuring absolute transparency and knowledge of reality to the citizens of the territory". Although your request does not state the reason why you are interested in knowing the information requested, it can be inferred, for the purposes of the association, that this is the control of municipal management and the detection and reporting possible irregularities.

The purpose of the access would be in accordance with the purpose of the transparency legislation which aims to "establish a system of relationship between the people and the Public Administration and the other obliged subjects, based on the knowledge of the public activity, the encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management" (article 1.2 LTC).

As this Authority has highlighted in the IAI report 20/2017, in relation to another claim presented by the same applicant entity against the same city council for

denial of access to invoices paid to certain companies in municipal works procurement files, access to this personal information may be justified:

"(...)

Invoices are the documents that, once drawn up by the administration, justify the payment by the latter to the contractor. It constitutes, in short, information directly related to the management of public expenditure, and could be relevant for the purposes of being able to detect possible irregularities in the processing of municipal works contracting files.

From the point of view of the entrepreneur or self-employed person affected, the information contained in the invoice is information linked to their business or professional activity, although as we have pointed out in the previous basis, it cannot be ensured that this information referred to in principle in the company, it does not end up affecting the employer and his privacy. However, it cannot be concluded that the knowledge of the information about the amounts paid to a contractor for the work carried out on behalf of the municipal administration, must necessarily cause harm from the point of view of privacy.

On the other hand, public access to the identity of the successful tenderer is already provided for in the transparency legislation and the publication of the subject of the contract and the award price is also provided for, data which, in fact, are those that would appear in the corresponding invoice and with which only the collection element would be added. Thus, access to the invoices would not imply a greater interference in the privacy of the affected and instead it is information that, as we have pointed out, may be relevant for the purpose of evaluating the administrative management in the field of the execution of the any works contract that has been signed, management that has a direct impact on public resources. For this reason, it is considered that Law 19/2014 would enable access to the requested invoices and the communication of data to third parties under the terms of article 11. 2.a) LOPD.

However, it should be borne in mind that according to article 4.1 of the LOPD, "Personal data can only be collected to be processed, as well as subjected to this processing, when they are appropriate, relevant and not excessive in relation to the scope and the specific, explicit and legitimate purposes for which they have been obtained. Thus, in accordance with the principles of purpose and proportionality, those identifying data (such as the NIF or address) of the affected persons, as well as other personal data that, beyond the identification of the successful tenderer, may be omitted beforehand be recorded and are necessary to achieve the purpose of transparency pursued

(...)"

As can be seen from the considerations made in this report, what justifies, from the perspective of transparency, access to the invoices issued by professionals in contracting with public administrations, in this case the city council, is that it is information that may be relevant to verify the appropriate application of public resources to the purpose and object of the contract awarded to the professional.



Thus, from the point of view of the right to data protection, it is considered that access should be facilitated to that personal information included in the invoices that is essential to achieve this objective of controlling public expenditure, such as the identity of the professional (name and surname), as well as the amounts charged in relation to the object of the contract and the specified works. However, prior to access, it would be necessary to omit those data that may be included and are unnecessary to achieve the goal of transparency pursued (for example, TIN, telephone number, address, email or the current account number of the persons affected).

All this without prejudice to the considerations regarding no. current account, and the possibility of partial access are made in the IAI report 32/2018 issued on this same date by this Authority with respect to the same affected parties.

It should be noted that article 25 of the LTC expressly provides for the option of facilitating partial access to the requested documentation when any of the limits on access to public information are applicable by providing that:

- "1. If any of the access limits to public information established by the previous articles are applicable, the denial of access only affects the corresponding part of the documentation, and restricted access to the rest of the data must be authorized.
2. If the restriction of access or the partial concealment of data makes it difficult to understand the information, the interested party can request a hearing with the Administration to clarify its interpretation. The Administration can provide the necessary contextual clarifications as long as they do not reveal information that has been legally hidden.
3. In the case of partial access to public information, the Administration must guarantee, by the most appropriate means, the reservation of the information affected by the legal limitations."

## VI

Finally, it is necessary to emphasize the importance of transferring the request to the affected persons, as provided for in articles 31.1 and 42 of the LTC, either by the City Council, during the processing of the request access, either by the GAIP during the claim 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 them with the data that can be used to contact them in contact

Likewise, remember that according to article 35.2 of the LTC "the right of access cannot be acquired by administrative silence if any of the limits established by this or other laws to have access to public information are met. "

**conclusion**

The regulations for the protection of personal data do not prevent access to the invoices that have been requested by the person claiming, without prejudice to omitting prior to access, those identifying data such as the NIF, the telephone, the address, email or number. current account of the affected persons, as well as other personal data that, beyond the identification of the successful tenderer, may be included and are unnecessary to achieve the objective of transparency pursued.

Barcelona, September 4, 2018

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