

IAI 32/2018

Claim: 241/2018

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 denial of access to current account numbers where a City Council has made payments for the services provided by a certain architect

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 241/2018 presented by an association against the City Council of (...) in relation to the denial of access to the current account numbers where payments have been made for the services provided by a certain architect hired by this 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 May 21, 2018, an association submitted a letter to the City Council of (...) in which it requested "to see the account numbers in which payments have been made from the City Council to the "architect (...)".

2. On June 12, 2018, the Mayor of the City of (...) issues a resolution by which it is agreed to inform the requesting entity that:

"(...) according to the City Council's understanding (and in accordance with Resolution 361/2017, of November 20, of the GAIP), these data are unnecessary for the control of public action, "so much for being irrelevant as to be redundant. Therefore, this data must be protected and excluded from access and it is the responsibility of the Administration to ensure that this protection is maintained".

Consequently, your request for access to the architect's account numbers (...) where the City Council has made payments in compensation for the services provided cannot be granted."

3. On June 28, 2018, the association filed a complaint with the GAIP against the City Council of (...) for not providing the requested information.

4. On July 27, 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 government, 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, 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.

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.

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 it is governed by the LOPD and its Implementing Regulations (RLOPD), given that this was the current regulation at the time the access request was made (May 21, 2018).

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

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.

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) of 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 Law 19/2014 of December 29, 2014, on transparency, access to information and good governance (hereinafter, LTC), establishes that "people have the right to access

to 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 is (...), an association that, under the name of (...), would be legally constituted and endowed with its own legal personality for the purposes of being able to exercise the recognized right of access 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".

State Law 19/2013, of December 9, on transparency, access to public information and good governance is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (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 and with regard to information that contains personal data, it is necessary to assess whether or not the right to data protection of the affected persons would justify the limitation of the right of access to public information regulated in the LTC that invokes the requesting entity.

III

The claim is filed against the denial of access to the current account number where the City Council of (...) would have made payments to a certain architect for the services provided.

In view of the statements made by the requesting entity in the statement of objections accompanying the claim and in view of the documentation attached to it (two invoices issued by the architect in question), it seems clear that the The City Council would have provided the entity with the invoices issued by this professional in connection with the execution of one or several contracts awarded by the council, although some of these invoices did not include this information (current account number).

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 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 rebate 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 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 compensation. (...)."

As can be seen from these articles, the data relating to the current account number of the person obliged to issue the invoice (in this case, the architect) is not part of the information that must be provided appear in these documents.

However, making use of the faculty granted by the same Billing Regulation, it may be common practice to include it as an indication of the means of payment for the service provided (proof of this is the invoices provided with the claim by the entity applicant). Therefore, in the present case, it is necessary to start from the premise that the information requested is information that the City Council would have.

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 the account number if it was information relating to a legal entity. However, given what the complainant has stated, this does not seem to be the case at hand.

On the other hand, article 2.3 of the Regulation for the deployment of the LOPD (hereinafter, RLOPD) provides that the data relating to individual entrepreneurs, when they refer exclusively to their quality as traders, industrialists or shipping companies, this is to their business activity, must be understood as excluded from the regime of application of the protection of personal data.

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 they have collected in the case of architects, various judicial pronouncements (among others SSAN 21.11.02 and 29.03.06 or the STS 20.02.07).

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 condition

of traders, industrialists or shipping companies and only when the data of the individual entrepreneur is used in a context that we could describe as strictly professional.

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.

In this case, in which the current account number of this professional is requested, it seems clear that we are dealing with data that, despite being linked to his professional activity, could also affect his private life, therefore subject in the LOPD.

Having said that, it is necessary to take into account the provisions 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 (data deserving of special protection), access to the information can be given, with the previous reasoned 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."

This Authority has had the opportunity to examine in previous reports (among others, in reports IAI 20/2017, IAI 21/2017, IAI 22/2017 or IAI 31/2018) the repercussion that, for the right to the privacy and protection of personal data (article 18.4 CE) of the affected persons - the professionals who issue the invoices - may entail admitting access to this type of document.

In particular, and for the purposes of interest in the present case, mention should be made of the IAI report 20/2017, issued at the request of the GAIP in relation to another claim presented by the same applicant entity against the same City Council in having denied him access to invoices paid to certain companies as part of municipal works procurement files.

Thus, in section IV of this report, which is reproduced below, the Authority has made it clear that:

"In matters of recruitment, article 13.1.d) of the LTC obliges the Administration to publish "d) The contracts signed, with the indication of the object, the tender and award amount, 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 procurement process. 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.

This precept would enable public access to the identity of the successful bidder, the subject of the contract and the amount of the tender and award, among other data. In this case, however, the invoices issued by the tenderer and paid by the City Council are requested.

(...)

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 people affected.

The complaining entity does not specify the specific reasons why it is interested in having the invoices issued by these specific companies, nor the procurement records to which they refer. It is limited to requesting any invoice paid by the City Council to these companies between 2014 and 2016. It is true that in the same claim form it refers to alleged irregularities committed in municipal works files, without specifying which files they would be in referring

The purpose of the transparency law "is to establish a system of relations between people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of retention of accounts and responsibility in public management" (article 1.2 LTC).

In this case, and in the absence of greater concreteness, the purpose of transparency would be the control of the actions of the administration in the field of the execution of municipal works contracts. 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 and control 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, should be omitted beforehand may be included and are unnecessary to achieve the goal 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 the context of the execution of a contract by the public (in this case, by the entity) is that it is information that is considered to be relevant to verify the appropriate application by the Administration (in this case, the City Council) of public resources to the purpose and object of the contract awarded to the professional (such as, for example, that no payments have been made for work not carried out or without justification).

In this sense, and from the point of view of the right to data protection, it is considered that the personal information included in the invoices that is essential to achieve this objective of controlling the actions of the Administration should be provided in matters of contract execution and, ultimately, control of public expenditure, such as the identity of the professional (name and surname), as well as the amount charged in relation to the specified works. However, other types of personal information that could be included, such as the NIF, telephone number, address, email address or bank details, would not be justified in providing them, as they are not strictly necessary for this purpose.

This is a consequence of the application of the principle of data minimization provided for in article 4 of the LOPD, to which any data processing must conform, including those that derive from compliance with the provisions established in legislation on transparency.

For this reason, access to the data relating to the current account number contained in the invoices issued by the architect and where the City Council has made the corresponding payment for the services provided by this professional does not seem justified, in general .

Having said that, the applicant entity alleges, in the statement of allegations that accompanies the claim, alleged irregularities committed in the awarding of contracts to this professional, given the personal relationship that supposedly unites him with the secretary of the City Council but, especially, given the professional relationship she allegedly maintained with the municipal architect. The entity points out, in particular, that, after examining various municipal documentation to which it has had access, some of the payments invoiced to the architect by the City Council could have been made to a current account that, the entity maintains, the 'architect would share with this municipal worker and who, for this reason, requests access to the data relating to the current account number.

From these manifestations it would seem to follow that, in the present case, the purpose intended by the entity with the requested access would go beyond the purpose of controlling the action of the administration to which reference has been made and it would rather focus on the demonstration or verification of an alleged breach of the regime of incompatibilities by the municipal architect or, even, of actions that could turn out to be constitutive of some criminal offense on the part of this employee.

Without prejudice to the fact that the data relating to the current account number could be relevant for the purposes of establishing the supposed professional relationship between the two architects, it must be borne in mind that the investigation of possible acts of corruption affecting the general interests or the management of public funds, such as a possible conflict of interest and/or the breach of the duty of abstention and of the incompatibilities regulations, and which may be subject to administrative or criminal sanctions, corresponds to the competent administrative authorities, the Public Prosecutor's Office or the 'judicial authority. It is these authorities who, in the context of the corresponding investigation, must be able to access that personal information available to the City Council that is relevant and necessary for the exercise of their functions.

In any case, from the information provided, it seems that the claimant is already aware of the aforementioned account number (as well as the fact of its shared ownership). For this reason, a possibility that would make both rights compatible for the purposes of being able to have clues about the identity of the account with a view to being able to formulate, if necessary, a complaint, could be to provide, for example, the last two digits of the no. of account. In any case, it is stated in the file that the entity would have already brought these facts to the attention of the City Council, as well as that the council would have started the corresponding actions to investigate them and clear possible responsibilities.

All in all, in view of the information available, it does not seem that, from the point of view of data protection, the entity's right to access the data relating to the full account number could be admitted current that appears in the invoices issued by the architect or that appears in other documents or supports in the municipal files for the indicated purpose.

conclusion

It is not sufficiently justified, from the point of view of data protection, the access of the claiming entity to the data relating to the complete current account number contained in the invoices issued by an architect in the course of the execution of a contract awarded by the City Council, for the purposes of demonstrating a possible irregular or illegal action by the municipal architect in the awarding of these contracts.

Barcelona 4 September 2018