

IAI 33/2018

Claim: 262/2018

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to the claim submitted by an association for the denial of access to information on the beneficiaries of the guaranteed income of citizenship

The Commission for Guaranteeing the Right to Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on claim 262/2018 presented by an association against (...) by the denial of access to information about the beneficiaries of the guaranteed income of citizenship.

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 17, 2018, an association submitted a letter to (...) requesting:

"The identification data (name and surname) of each of the beneficiaries of the guaranteed citizenship income, with the amounts received by each of these beneficiaries, from the creation of this income until the present day".

2. On June 18, 2018, the (...) issued a resolution by which it was agreed:

"To completely reject the request for access to public information presented (...), given that the information requested is affected by the limitation of access to public information provided for in article 21 of Law 19 / 2014, of December 29, on transparency, access to public information and good governance".

3. On July 17, 2018, the association filed a claim with the GAIP against (...) for denying access to the requested public information.

4. On August 1, 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.

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.

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 contained in the requested information is outside the scope of this report, as would be the case of the limit established in article 21.1.f) of Law 19/2014, of December 29, on transparency, access to public information and good governance, relating to privacy and other legitimate private rights, the application of which could lead to the right of access of the claimant entity must be denied or restricted.

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 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 17, 2018).

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

II

The claim is filed against the denial of access to information about the beneficiaries of the guaranteed income of citizenship, from the time the income was created until the present day, consisting of their identifying data (name and surname) and the amount received.

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 assignment 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 (hereafter, 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 is an association, which 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".

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.

IV

Article 24.2 of the LTC, relating to the protection of personal data, states that:

"2. If it is other information that contains personal data not included in article 23 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the affected people 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."

The guaranteed income of citizenship is "a social benefit of an economic nature and periodic perception that is configured as a guaranteed benefit of subjective right and whose purpose is to develop the promotion of the person and their empowerment and to overcome the conditions that have due to need this benefit" (article 2.1 of Law 14/2017, of July 20, on the guaranteed income of citizenship).

With regard to the information requested and the effects of the aforementioned weighting, it must be borne in mind that we are dealing with a matter, that of subsidies and public aid, which is governed by the principle of publicity.

Thus, the LTC establishes in its article 15 a detailed regulation on the advertising of subsidies and public aid, in the following terms:

"Transparency in subsidy activity 1. The information relating to subsidies and public aid that the obliged entities must make public in application of the principle of transparency must include: (...) c) Subsidies and aid granted public, **with the indication of the amount, the object and the beneficiaries.** This information must include grants and aid, must be up-to-date and must refer to the last five years. **It must also include subsidies and grants awarded without advertising and competition** if these requirements have been exempted, in the cases established by law. **In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved.** (...)."

This precept expressly enables the disclosure of information on subsidies and public aid granted regarding the amount, the object or purpose and the identity of the beneficiaries, in order to enable citizens to know exactly who receives a subsidy, how much and what do you get it for? However, it also expressly provides for the preservation of the identity of the beneficiaries of those subsidies and public aid that are granted for reasons of social vulnerability.

In accordance with Law 14/2017, already mentioned, the guaranteed citizen's income is granted to those people who, meeting the requirements established by law (article 7), are at risk of poverty or social exclusion, for the purposes of promote their autonomy and active participation in society (article 1).

The legislator considers that this particularly vulnerable group includes people who have extreme material deprivation, those whose income per unit of consumption is below 60% of the average and those who live in households with an intensity of very low or no employment.

This is an economic benefit from which people who are part of the same nucleus as members of the respective family unit can be beneficiaries and which responds to their particular conditions and needs (Article 5). Thus, although it is granted based on the income of the holder (the person in whose favor the benefit is approved), specific personal and family situations are also taken into account (being unemployed and without resources, being a pensioner or recipient of benefits and other subsidies, being single-parent families, having refugee status, being a victim of gender-based violence, existence of disability situations, etc.).

Although the entity requests to know the identity (name and surname) of the beneficiaries of the income, as well as the amount received for this concept, it must be borne in mind that this information is related to the object or purpose of the social benefit it would also reveal the existence of a situation of special need.

Despite not being particularly protected data, in the terms of article 7 of the LOPD, or data included in this category with a specific regime (those relating to administrative or criminal offences), it is information deserving of a special reservation or confidentiality, as is apparent both from Law 14/2017 (article 15) and from Law 12/2007, of 11 October, on social services (article 9).

It seems clear that these circumstances would act as a limit to the publication of the identity of the beneficiaries of the guaranteed income of citizenship, with an indication of the amount received, to which both the LGS and the LTC refer (articles 20.8 and 15.1 .c), respectively), but they could also act as a limit to the citizen's right of access (article 18 LTC) - which is configured, according to the preamble of the same LTC, as a right that complements the information that the citizen can obtain through transparency - in the event that the relevance of the specific identification of these people is not sufficiently proven.

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 and ultimately the reasons for which he is interested knowing the information adds a very important element to consider as a weighting criterion.

The applicant entity alleges that it intends to "ensure that the Administration is making adequate use of the referred social cohesion instrument and that they are not perceiving how many people because of their personal link with the political leaders".

In view of this, and in the absence of greater concreteness, it is necessary to understand that the request for information should be framed in the purpose of evaluation and control of the performance of the Administration to which the LTC itself.

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

It does not seem that this mere allusion to possible irregularities in the granting of the guaranteed income of citizenship, without providing any other additional information, can justify, in view of the nature of social assistance, linked to situations of vulnerability, revealing the identity of the people who have turned out to be beneficiaries. It should be borne in mind that the purpose of these grants is precisely "to develop the promotion of the person and their empowerment and to overcome the conditions that have led them to need this benefit" (art. 2 of Law 14/2017), and that an indiscriminate disclosure of the identity of the beneficiaries could go precisely against this purpose, causing a stigmatization of these people.

In this context, it could be understood that the right of access requested by the entity could be satisfied by providing it with the same information that the Administration must publish in compliance with the obligation to actively advertise their subsidized activity in what article 15 of the LTC refers to and in the same terms provided for in that precept, this is with information

aggregated or with an anonymized list of the grants awarded for this concept with an indication of the amount received, as long as it cannot be linked to specific people.

All in all, with the information available and making a general weighting, it does not seem that, from the point of view of data protection, the entity's right to access the identity of the people who have turned out to be beneficiaries of the guaranteed citizenship income and the amount that each of them has received.

conclusion

In view of the regulations on the protection of personal data, it is not justified for the claimant entity to access the information that allows the identification of the beneficiaries of the guaranteed income of citizenship with an indication of the amount received for this concept. This, without prejudice to the fact that this type of information can be provided in an aggregated or anonymized manner.

Barcelona, September 4, 2018

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