

Ref.: IAI 34/2018

Claim: 252/2018

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public notice on the claim against a University for the partial denial of access to budget execution documents and invoices that are included as proof of research projects and the publications of a Research Group that are listed to the application

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 252/2018 presented against a University in relation to the partial denial of access to budget execution documents and invoices that are included as proof of research projects and the publications of a Research Group listed in the application.

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 15, 2018, an access request submitted by a citizen requesting access, in electronic format, to the budget implementation documents and invoices was entered in the register of a University 'incorporate as proof of the research projects and the publications of a Research Group that are detailed in the same application.
2. On June 27, 2018, the University notifies the citizen of the resolution of partial acceptance of the request for access to public information, by which the Department of Political Science and Public Law is ordered to facilitate, within the maximum period of 30 days the economic data of the projects that are related, while respecting the legislation on the protection of personal data.
3. On July 9, 2018, the citizen submitted a claim to the GAIP to consider that the University's response was not in accordance with the law and that the deadlines had been breached.
4. On July 10, 2018, the GAIP requires the citizen to specify his claim so that he clearly identifies which of the requested information has been denied, which has been delivered and any other reason on which his claim is based claim It is not recorded in the file that this claim has been attended to by the person making the claim.
5. On July 19, 2018, the GAIP forwards the claim submitted to the University and requests the corresponding report as well as the complete file.

6. On July 27, the University issues a report in which it states the reasons for the partial assessment of the request and justifies compliance with the deadlines of the LTC to resolve and provide the information.

7. On August 1, 2018, the GAIP requests this Authority to issue a report 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, understood as any numerical, alphabetical, graphic, photographic, acoustic information or of any other type relating to physical persons identified or identifiable without disproportionate efforts (arts. 5.1.f) and 5.1.o) of the Regulations for the deployment of the LOPD, (RLOPD), approved by R. decree 1720/2007, of December 21). 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.

With regard to the applicable data protection legislation, 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 (January 31, 2018).

Point out, however, that the conclusions of this report would not vary substantially 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 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".

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)).

However, in accordance with article 20 and s. 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, access must be denied if the information to be obtained contains particularly protected data, unless there is express consent from the interested parties (art. 23 LTC).

In the event that the information to which you want to access does not contain specially protected data, to determine the extent of the limit it is necessary to balance the right to data protection of the affected persons, and the public interest in disclosure of the information (art. 24 LTC).

III

The claimant requests financial data relating to the implementation of the budget and invoices for the projects of a Research Group, which he lists in the request. This information is public information subject to the LTC regime.

The supporting economic documentation can be of different nature. In general, in this type of project, funding can be applied to concepts such as:

- a) Expenses of personnel hired for the development of the action (including salaries and Social Security contributions).
- b) Costs of acquisition, rental, maintenance or repair of equipment, instruments necessary for the performance, including computer servers and computer programs
- c) Acquisition of expendable material, supplies and similar products
- d) Consulting expenses and equivalent services intended exclusively for the activity that is the object of the action.
- e) Travel expenses and per diems, attendance at congresses and conferences, visits and short stays of researchers, both guests and the research team of the project or participant in the performance or that is duly justified
- f) Contributions to societies international necessary for execution
- g) Expenses derived from advice such as management consultancy, assistance
technological consulting on data banks and technical libraries
- h) Expenses deriving from advising on the conduct of studies, dissemination, advertising, preparation of training material, rental of rooms, organization of conferences and events, congresses, seminars and other actions intended for the development and execution of the activities for which have been granted.
- i) Compensation of research staff not linked to the beneficiary entities when participate in the execution of the actions subject to subsidy.

Therefore, the supporting documentation will include information on the recruitment of personnel and the procurement of goods and services (either material for the realization of the project, advice, organization of conferences, publications, travel and accommodation expenses, etc.). This information contains personal data, either of the researchers who have participated in the project or of external suppliers.

IV

In relation to the documentation relating to the procurement of goods and services attributable to the projects, and more specifically to the corresponding invoices, which is the information requested by the claimant, it must be taken into consideration that the minimum content of an invoice is that required by articles 6 (invoices in general), and 7 (in the case of simplified invoices) of Royal Decree 1619/2012, of November 30, which approves the Regulations governing invoicing obligations.

Thus, the invoices will contain, at least, 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 in

that the advance payment has been received when it is different from the invoice issue (art. 6. i) and the reference to the regulatory provision in case the operation is exempt from VAT.

Taking into account that the information that may be contained in the invoices would not, in principle, be particularly protected data (art. 23 LTC and art. 7 LOPD), in order to give access to the same it will be necessary to carry out, beforehand, a reasoned weighting of the public interest in disclosure and the rights of the affected persons, taking into account, among others, the circumstances provided for in article 24.2 of the LTC, as follows:

"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. (...)"

Although in accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, the fact that the applicant expresses what is the purpose he is pursuing or the reasons for which he is interested knowing the information, constitutes a very important element to be taken into account as a weighting criterion between the public interest in the disclosure of the information and the rights of the people affected.

In the request that is the subject of the claim, the purpose of the access is not stated, but in accordance with article 1.2 of the LTC, the transparency legislation aims to "establish a system of relationship between people and the Administration public and the 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 the retention of accounts and responsibility in public management".

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.

For the purposes of transparency, there does not seem to be any doubt about the relevance it can have for citizens, to have the information that allows them to know what the universities are spending the resources for research on.

Access to the identity of the awardees is already provided for in the transparency legislation as an active advertising obligation (art. 13.1.d), as well as the object of the contract and the award price, data that, in fact, in principle, are the basic data that would appear in the invoices corresponding to the justifications for the acquisitions of goods and services by the University's Research Group. Thus, access to the corresponding invoices would not imply a greater interference in the privacy of those affected.

We reach the same conclusion in the event that the tender aims to hire an external researcher or expert in the field to carry out specific conferences or studies. In this case, in addition to the active advertising obligations of article 13.1.d) of the LTC, knowing the identity of the hired persons allows an assessment to be made on the

their suitability for carrying out the assigned tasks. It must be taken into account that in most cases the people who are hired will be people of recognized prestige in the field and, most likely, in the case of conferences or publications, the identity of the expert or researcher has already been the subject of publicity prior, which reinforces the criterion of less interference in the privacy of those affected.

Beyond the information relating to the successful tenderer, the invoices must contain information on the subject of the contract. The description of the object may refer to information from third parties other than the successful tenderer, such as the researchers participating in the projects, for hotel accommodation or travel expenses, plane tickets, etc. in which the person carrying out this activity is recorded.

In this case, it is necessary to consider the need to access this information in such a way as to allow the use of public funds to be evaluated, without unjustifiably sacrificing the right to data protection of these affected persons. Some information may be unnecessary, but the general description of the expense imputation concept and the identity of the beneficiary persons can help determine that the expenses of the researchers assigned to the project and not others are being imputed. On the other hand, the data of the main researcher is data that has probably already been made public when the project is approved. Therefore, once again the criterion must be to give access to the identity of these people since their knowledge is a decisive element to allow this control of the destination of public resources in research projects.

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, insist that according to article 4.1 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 specific, explicit and legitimate scope and purposes for which they have been obtained." (in the same sense the article the principle of minimization contained in article 5.1.c) RGPD).

Thus, in accordance with this principle, it would be necessary to omit prior to access, those identifying data (such as the NIF or the address of the affected persons) as well as other personal data that, beyond the identification of the successful bidder, or of the researchers assigned to the project and the general description of the object may be included and are unnecessary to achieve the goal of transparency pursued.

v

The supporting documentation may also contain personal information of people who have been hired as research staff for the development of the project, or the justification of the dedication or remuneration of people who are already part of the Department of Political Science and Public Law of the University, which as indicated in the letter of June 27, 2018, is the Department that has carried out the projects mentioned in the application.

Article 9 of the LTC imposes the obligation to actively publicize "...the identification of those responsible for the various bodies and their professional profile or career." (article 9.1.b), "...the list of temporary and internship contracts not linked to any job in said list of jobs... (9.1.d)", and "the calls and the results of the selective staffing and promotion processes." (9.1.e) .

If this information is to be the subject of active advertising, the identification data of the people hired as a researcher to develop these projects must be able to be delivered for purposes of control of administrative activity. There would also be no problem in being able to know the identity of personnel who were already part of the University's staff and who participated in the project.

With regard to their remuneration, the transparency legislation would in any case enable access to the remuneration received by high-ranking officials and the holders of superior and managerial bodies, because article 11.1.b) LTC requires the publication of remuneration (including allowances and per diems) received by such persons. On the other hand, as this Authority has maintained in previous reports on remuneration (IAI 9/2016 and IAI 19/2016, among others) available on the Authority's website, this same criterion can be extended with respect to staff who occupies positions of trust, of special responsibility within the organization, of free appointment, or that involve a high level of remuneration. Although in these cases the law does not provide for the publication of their remuneration on the Transparency Portal, with regard to requests for access to information, it must be borne in mind that these are sites that, due to their singularity and also due to the level of remuneration they usually bring associated, the knowledge of their remuneration can be relevant for the control of the use of public resources.

As for the rest of the staff in which these circumstances do not occur, in principle, given that these are positions with a lower level of responsibility, and consequently with a lower level of remuneration, the evaluation of the use of public resources can be made having information on remuneration grouped by category or according to the different types of workplace. In this sense the LTC (art. 9.1.d) provides for the publication of the RLT (from which you can find out certain remunerations corresponding to a job (salary, specific supplement and destination supplement)) and also information aggregated by groups and scales or levels (art. 11.1.e)). Given that this is information that must be the subject of active advertising, data protection regulations would not prevent access to this information.

This regime would be applicable even if it is temporary or temporary jobs not included in the RLT, given that article 9.1.d) LTC gives them equivalent treatment to the positions that are part of the RLT.

In these cases, the control of the good use of public resources can be carried out with the knowledge of the information on remuneration provided for in the RLT and in the general information referred to in article 11.1.e) of the LTC .

Nor would the data protection regulations prevent access to this information if it were made anonymously.

In the event that a remuneration concept different from those derived from the applicable regulations is drawn up, even though it is ad personam remuneration, or precisely for this reason, it could be justified to have to give access, especially in those cases in that in its granting there is a margin of discretion, given that in principle these retributive concepts would not have the publicity guarantees offered by both the annual budget laws and the RLT.

conclusion

The data protection regulations do not prevent the claimant from accessing information relating to the execution of the budget and invoices for the projects and publications of the requested Research Group. However, it would be necessary to omit prior to access, those identifying data (such as the NIF or the address of the affected persons) as well as other personal data that, beyond the identification of the successful tenderer, or of the researchers assigned to the project and the description general of the object may be contained there and are unnecessary to achieve the purpose of transparency pursued.

It also allows access to individualized information on the remuneration received by senior managers and managers and other personnel who occupy positions of trust, of free appointment, of special responsibility within the organization or that involve high levels of remuneration or when it comes to concepts remuneration not provided for by current regulations.

On the other hand, for the rest of the staff, this information can be provided in an aggregated way by groups or scales, and also through the remuneration concepts provided for in the RLT or in an anonymized way.

Barcelona, 31 August 2018