

Ref. : IAI 43/2018

**Claim: 300/2018**

**Report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public on the claim of a citizen against a public sector foundation for the denial of access to information on the remuneration of its workers and the activities carried out with public money.**

The Commission for the Guarantee of the Right to Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim against a public sector foundation for the denial of access to information on the remuneration of its workers and the activities carried out with public money.

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 November 15, 2017, a citizen presents a letter to the City Council in which he states that this corporation subsidizes a foundation each year with the amount of €5,000,000, and requests the breakdown in relation to this subsidy by years and the justification of the expenditure through invoices of the destination of the public money received by this foundation in the years 2013, 2014, 2015 and 2016.
2. On January 17, 2018, this person submitted a second letter to the City Council in which he pointed out that on January 9, 2018 he was given access to the subsidy file and that, once examined, has been able to verify that the only supporting accounts for the grant that exist are those corresponding to the 2012 financial year. The interested party states that for the years requested there are no accounts but a "budget project report", and insists again that under the protection of the Transparency Law, the breakdown by year and the justification of expenditure by means of invoices for the destination of public money received by the foundation in the years 2013, 2014, 2015 and 2016.

Specifically, according to the same letter, the request for accounts covers the destination of the grant money to this entity, which includes the expenses incurred in wages, projects, studies, collaboration with public and private companies, courses, conferences, congresses, scholarship forums, financial aid, prizes, donations, organization of events, purchase of material, purchase of consumables, diets and any other that are within their powers.

3. On February 12, 2018, the City Council forwarded the request for access to the Foundation in order for it to respond to the interested person.

4. In response to this request, the Foundation decides not to admit the request for access to the information on the understanding that the case provided for in article 29.1.b) of Law 19/2014, which provides for the non-admission in the application process if a complex task of elaboration or re-elaboration is necessary to obtain the information requested.

5. On March 23, 2018, the person concerned sends a new letter to the Foundation in which he requests access to the expenses incurred in wages during the year 2016, and the expenses incurred in scholarships, financial aid, prizes, donations and subsidies during the year 2016.

6. On April 17, 2018, the Foundation decided to accept the request and provide the information in the terms set out in the resolution.

Specifically, the interested party is informed of the overall amount corresponding to expenses in salaries, wages and similar, and of the overall amount of social charges during the year 2016.

Likewise, the interested party is informed:

- That there is no record of the granting or receipt of scholarships, financial aid or prizes.
- That the amount received by the Foundation in terms of subsidies during the year 2016 amounts to €15,000,000 (from the sum of €5,000,000 allocated by each of the three Public Administrations patrons of the Foundation).
- That the amount received by the Foundation during 2016 in terms of "donations and other income from activities" is €2,150,000, and that there are no donations granted by the Foundation to third parties.

7. On April 27, 2018, the interested party again submitted separate written requests for information on:

- The individual salary of each worker, per diems, work lunches, category professional and type of contract corresponding to the years 2015 and 2016.
- The activities carried out with public money during the year 2016, the cost of each of them and the obligatory supporting invoices.

8. On June 8, 2018, the Foundation resolves the request in the following terms:

Regarding the access to the individualized salary of the workers and other information that is requested, the interested party is provided with the information on the salary of the General Director corresponding to the years 2015 and 2016, as well as the overall amount received in terms of expenses, per diems and work lunches in each of these years.

On the other hand, it is considered that access to the individualized salaries of the rest of the workers and their allowances would go against the regulations for the protection of personal data. Information is given on the overall expenditure on salaries during these two financial years and reference is made to the information on the remuneration structure and the list of jobs available on the entity's transparency portal.

With regard to access to information on the activities carried out with public money during 2016 and the cost of each of them justified with the mandatory invoices, the interested party is provided with the closing report of the financial year 2016 with a specific detail of all public expenditure spent on each of the Foundation's programs that year, as well as the breakdown of the main expenditure items for all programs and departments. On the other hand, it opposes the delivery of the invoices on the grounds that it is impossible to provide the requested documentation as it is a task of complex elaboration and re-elaboration, an assumption contemplated in article 29.1.b) of the LTC.

9. On July 4, 2018, the interested party submits a new letter in which he expresses his disagreement with the answer given by the entity, emphasizing that the information published on the transparency portal is limited to putting a few lines salaries that in some cases vary by more than 50%, and insists that what is requested are the salaries and allowances actually received by each worker and not a hypothetical salary.

10. On the same date, July 4, 2018, the interested party presents two new documents requesting the following information:

- Salary received by the Director General in the years 2013 and 2014, as well as the justification through the corresponding invoices for expenses and per diems in lunches and other expenses of the Director General corresponding to the years 2015 and 2016.
- Breakdown and justification with mandatory invoices for the item "Independent Professional Services" of the income statement at 31 December 2016, which amounts to €11,355,789. In the event that it is considered that the request exceeds the human resources of the entity, the interested party requests that the first 50 invoices of the year 2016 be delivered to him.

11. On August 1, 2018, the Foundation resolves the previous requests and provides the interested party with information on the Director General's salary for the years 2013 and 2014, 2015 and 2016. A document in excel format is also provided with the breakdown of expenses in diets and lunches with the maximum detail of the information available, according to the entity.

It also provides information on the amount of the wage bill, the number of workers, distinguishing between the number of fixed and temporary contracts, as well as the respective categories, referring to the years 2015 and 2016.

The Foundation opposes the delivery of all invoices for the services that make up the "Independent Professional Services" item under article 29.1.b) of the LTC, and facilitates the delivery of a breakdown of this item along with 50 invoices for some of the services that make up it.

12. On August 17, 2018, the applicant filed a complaint with the GAIP against the rejection of part of the requested information.

Specifically, according to the claim form and the letter that accompanies it, the interested party claims the following information that has not been provided to him:

- the list of wages, professional category and type of contract of the entity's workers.
- the information on expenses for per diems, work lunches and other expenses of the Director General (what the expenses consist of and their totality).
- the rest of the invoices from the item "independent professional services" corresponding to the year 2016.

14. It is contained in the Foundation's file report in relation to the present claim as well as a copy of the file of the access requests that precede it.

15. On September 25, 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.

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.

Point out that although the new RGPD is fully applicable from May 25, 2018 (article 99), access requests must be analyzed taking into account the regulations in force on the date of submission of the application legality

This means that the data protection regulations applicable to resolve the access request submitted on April 27, 2018 are the LOPD and its implementing regulations (RLOPD), regulations in force at that time, and in change to resolve access requests submitted on July 4, 2018, the applicable regulations are the new RGPD.

Point out, however, that the conclusions of this report would not vary if one or the other is 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

Article 18 of Law 19/2014 (hereafter LTC), establishes that "people have the right to access public information, referred to in article 2.b, individually or on behalf of representation of any legally constituted legal person" (section 1).

Article 2.b) LTC defines "public information" as "the information prepared by the Administration and that which it has in its possession 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 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

Article 3.1.b) LTC provides that this law is applicable, among others, "b) To public bodies and entities, companies with a majority stake or linked, public **sector foundations** ,(...)"

The Foundation is an entity established (...) with an initial fund of €60,000.00 contributed in equal parts by the founding entities (information obtained from the annual reports of the various years published on the Foundation's website). The entity is governed by its statutes, by Law 4/2008, of 24 April of the third book of the Civil Code of Catalonia relating to legal entities, by Law 21/2014, of 29 December of the protectorate and foundations and verification of the activity of associations declared to be of public utility and other applicable regulations.

The resolutions of the general director of the Foundation on the requests for access contained in the file, qualify the entity as a public sector foundation, included in the entities listed in article 3.1.b) of LTC. As such, and exclusively for the purposes of the application of the Transparency Law, this foundation has the qualification of public administration (art. 2.f) of the LTC.

As a subject bound by the transparency legislation, it is therefore subject to the fulfillment of the obligations established therein, and this includes both the active advertising obligations provided for in articles 8 to 15 of the LTC, as well as those may derive from the exercise of the right of access provided for in article 18 of the LTC.

Thus, the information related to staff remuneration and the activity carried out by this entity is public information for the purposes of article 2.b) LTC and, therefore, remains subject to the access regime provided for in the transparency legislation. However, in accordance with article 20 and s. of Law 19/2014, 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 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 LTC.

#### IV

Given the content of the various requests for access to information that precede the claim, and given that part of this information has already been provided by the claimed entity, this report will focus on analyzing the impact it may have on the right to data protection access to information that has been denied and is now being claimed.

Specifically, according to the claim form and the letter that accompanies it, the claimant requests that he be provided with the information listed below and that the interested party considers that he has not been provided:

- List of salaries, professional category and types of contracts of the Foundation's workers during the years 2015 and 2016, requested by letter dated April 7, 2018.
- The breakdown of expenses in per diems, work meals and other expenses received by the Director General during the years 2015 and 2016, and their justification through the corresponding invoices, requested by letter of July 4, 2018.
- Supporting invoices for the expenditure item "Independent Professional Services" corresponding to the year 2016, requested by letter of 4 July 2018.

#### V

With regard to access to the salary list, professional category and type of contract of the Foundation's workers.

In general and from the perspective of the right to the protection of personal data of the persons affected, it should be pointed out that the information on the remuneration of a job provides information on the economic and work profile that may affect the person who occupies it, both in the professional sphere and in the social and economic sphere, and this is directly, facilitating the identification of the person who occupies the specific position, or indirectly, when it is of places that can be related, in other ways, without disproportionate effort, to the people who occupy them.

In any case, the nature of the information to which you would have access is, a priori, of an economic or occupational type, linked to work activity. As it is not, therefore, particularly protected data (article 7 LOPD) or data affecting the intimate personal or family sphere, it is necessary to take into account the provisions of article 24.2 of Law 19/2014:

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

The same Law 19/2014 imposes on the obliged subjects certain duties of active advertising in relation to the publication of the remuneration of certain jobs.

Specifically, article 11.1.b) of the LTC establishes that "remuneration, compensation and per diems, the activities and assets of members of the Government, of high-ranking officials of the Public Administration and of the managerial staff of public bodies, societies, **foundations** and consortia, and the compensation they must receive when they cease to hold office."

As for the rest of the workers, article 11.1.e) of the LTC obliges only to publish " general information on the remuneration, compensations and per diems received by public employees, grouped according to the levels and bodies".

Taking these forecasts into account, and for the case at hand, the Foundation should publish individually the information on all the remuneration received (full amount for any type of remuneration, compensation or allowance) of those people who have the consideration of managerial staff, while for the rest of the staff, it is sufficient that this information is provided in a generalized way and grouped according to the functions of the levels and bodies

There is no specific provision in the transparency legislation of what is to be understood by "managerial staff". Even so, in accordance with the entity's statutes in force (...) and articles 332-1 and 332-2 of

Law 4/2008, of April 24, of Book Three of the Civil Code of Catalonia relating to legal entities, and with the information on the organizational structure published on the entity's transparency portal, within the managerial positions it seems which would be included for the purposes of article 11.1.b) of the LTC: the members of the board of trustees (superior body of governance and representation of the Foundation who is responsible for fulfilling the foundational purpose and diligently administering the assets and rights that integrate the Foundation's heritage, maintaining the performance and usefulness of the same); the members of the Executive Committee (delegated body of the Board of Trustees which, according to the information available on the entity's website, is responsible for supervising and controlling the activity of the Foundation); the members of the Delegated Commission (delegated body of the Board of Trustees to which it corresponds, carry out the specific monitoring of the project (...) or also project (...), and the general manager, in charge of the ordinary or administrative management of the activities of the Foundation.

Point out that even though the position of patron is strictly free, they have the right "...to be reimbursed for the duly justified travel expenses incurred to attend the meetings and for those other expenses incurred as a result to carry out a mission entrusted in the name and interest of the Foundation" (Article 13 of the Foundation's statutes), and therefore, the per diems or compensation for expenses received by these persons in the exercise of the position should be published on the transparency portal.

Beyond the individualized remuneration information of managerial positions that must be published on the transparency portal, this Authority has maintained the possibility of accessing the individualized remuneration information of other employees through the exercise of the right of access (you can consult the reports IAI 9/2016, IAI 19/2016, IAI 12/2017, IAI 36/2017, IAI 4/2018 among others, available on the APDCAT website [www.apdcat.cat](http://www.apdcat.cat)).

In this sense, it is considered that the criterion that the Transparency Law uses for senior positions or managerial positions can be extended to personnel who occupy positions of trust, of special responsibility within the organization, of free appointment, or that entail a high level of remuneration. Although in these cases the law does not provide for the publication of their remuneration on the Transparency Portal, it should be borne in mind that these are positions that, due to their uniqueness and/or the high level of remuneration they usually bring associated, the knowledge of their remuneration can be relevant for the control of the use of public resources.

This evaluation and control of the use of public resources is framed within the purpose of the Transparency Law consisting of "establishing a system of relationship between people and the Public Administration and the other obliged subjects, based on the knowledge of the public activity, encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management." (article 1.2 LTC).

Taking into account the criterion pointed out and according to the information available on the entity's website, this would be the case, for example, of the directors and managers of the respective departments (...). This would also be the case for the members who are part of the Corporate Management Committee, which is defined in the "MANAGEMENT BODIES" section as the strategic coordination body of the Foundation that supports the Director General in the definition of the strategic plan.

In these cases, and as has already been argued in previous reports, the intensity of the duty of transparency is greater when it comes to knowing the remuneration of personnel who occupy positions of trust or special responsibility within the organization, is linked to the entity by a senior management contract or of another type, which entails high levels of remuneration that may be relevant for control in the use of public resources. In short, these are positions that have a high level of responsibility in the management of public resources, in the decision-making process and in short in the management of the foundation.

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 the information on remuneration grouped by category or according to the different types of workplace, and for this reason we understand that it would not be justified to provide individualized personal information on the remuneration, per diems or compensations received by the rest of the workers of the template. Specifically, this would be the case, for example, of the professional categories corresponding to managers, technicians and support staff, which appear in the "Remuneration Structure (...)" document published on the entity's website.

The Foundation argues the denial of access to the individualized salary report on the fact that it can provide information about the person who occupies a specific job. The claimant expresses his disagreement in the letter that accompanies the claim, citing the fact that he has no interest in knowing the names of the workers, and points to the fact that he saw the number of workers and the categories of contracts (fixed, temporary, part-time, interns), and the absence of names both on the transparency portal and elsewhere would make it impossible to know the names. In this sense, he points out that the Foundation's staff for 2015 was 33 workers and for 2016 it was 47 workers, so he insists on the impossibility of knowing who is who.

Access to public information prior to dissociation of the personal data contained therein (anonymization) so that it is not possible to identify the persons affected either directly or indirectly (Article 5.1.e) RLOPD) is the first option that must be taken in consideration of an access request, as long as the personal data are not relevant to satisfy the public or private interest that motivates access to the information in question.

This option is expressly provided for in article 15.4 of Law 19/2013 by establishing that "What is established in the previous sections will not be applicable if access is effected prior to dissociation of personal data in such a way as to prevent the identification of the affected persons."

However, it must be noted that in order for anonymization to be considered sufficient, under the terms of data protection legislation, it must be guaranteed that the information provided cannot be linked to an identified or identifiable natural person.

Thus, anonymization would require the elimination of all information that could allow the identification of the person or persons affected, taking into account not only the information contained in the document that is provided but the data that can be obtained by other roads,

assessing whether or not there is a real risk of re-identifying the affected persons without making disproportionate efforts.

This is a consequence of the application of the principle of data minimization that must be respected in any processing of personal data. In accordance with article 4.1. LOPD "Personal data can only be collected to be processed, as well as subjected to this processing, when they are adequate, relevant and not excessive in relation to the scope and the determined, explicit and legitimate purposes for which have been obtained." The new RGPD includes this principle of minimization in article 5.1.c), establishing that the data to be processed must be adequate, relevant and limited in relation to the purpose for which they are processed.

Certainly the claimant is limited to requesting individualized information on the salary, allowances, professional category and type of contract of the workers, without asking that they be identified directly with their first and last names, but specifying that they are interested in the amounts received and not those that they can hypothetically perceive. This information is not related to a specific job but to the person who occupies it.

In this case, it should be borne in mind that in terms of organizational structure, article 9.1.b) of the LTC, which also applies to foundations in the public sector, obliges to publish "...the identification of those responsible for the various bodies and their professional profile and trajectory". In the case of entities such as foundations, it is certainly not appropriate to refer to organs in the sense that this word is used when referring to the organs of public administrations. But an interpretation that takes into account the purpose of the Law easily leads to the conclusion that there would be an obligation to make public on the portal the identity of those people who occupy positions that can be qualified as having special responsibility within the organization, having account for this purpose not only the people who are part of the management bodies but also others such as area directors or similar, with decision-making capacity over the foundation's activity or over the entity's workers.

On the other hand, this same precept obliges to publish "e) The calls and the results of the selective provision and professional promotion processes". In other words, when the selection process is carried out in order to be able to occupy a certain job, it is necessary to give publicity to the person who obtained it. This would allow the person to be identified and linked to a specific workplace.

Thus, and without going any further, the same provisions of the Transparency Law could make it possible to indirectly relate the information requested by the interested party (remuneration and per diems received by each of the workers, professional category and type of contract, with the identity of the people who perceive them).

Therefore, the right to data protection would not prevent the individual giving the claimant information on the remuneration received, for all concepts, including per diems and compensations received by the general manager and by those other workers who hold positions of trust or of special responsibility in the management of public resources and participate in decision-making. On the other hand, with respect to the rest of the staff, the information must be given in an aggregated form, grouped into professional groups or categories.

## VI

With regard to access to expenses in per diems, working meals and other expenses of the Director General corresponding to the years 2015 and 2016, and the justification of these expenses.

The claimant already has information on the overall amounts received by the Director General in terms of salary and allowances during the years 2013 to 2016.

The entity would also have provided in Excel format a breakdown of the amounts included in the General Manager's expenses without being classified by concept (travel, restaurant, etc.). The interested party is dissatisfied with the information provided and insists on knowing what the expenses paid for (diet, mileage compensation, meals) consist of and their totality, and the supporting invoices for these expenses.

The degree of impact on the right to the protection of personal data of the affected person (the general manager) that may entail access to the cause or reasons that justify the collection of allowances or compensation depends on the degree of detail in which these expenses appear specified.

The nature of the information to which you would have access, if its existence is verified, is, a priori, of an economic or occupational type, linked to the work activity, and therefore, it is necessary to make a prior weighting between the interest public in obtaining information and the general director's right to privacy, as provided for in article 24.2 of the LTC.

The person making the claim does not state the reasons why he seeks access to the details of the concepts on the basis of which the Director General would have received the per diems or compensations, but he does express an interest in knowing what is the destination of the money that the Foundation receives via subsidies from the City Council.

Bearing in mind that the Transparency Law already provides for the full remuneration received by managerial positions to be made public, for all concepts, there should be no inconvenience in providing the interested party with information on the amounts received, distinguishing between what they are per diems for meals, allowances or compensation for mileage or any other type of expenditure incurred by the general manager. Indeed, this breakdown can be relevant to evaluate the management and use of public resources, for the purposes of demanding the withholding of accounts from the Foundation's patron Public Administrations.

The general director holds the post in a public sector foundation, and the amounts he may receive for any reason, whether they are of a retributive nature (salary or assistance for dedication), whether they are of an indemnifying or compensatory nature (expenses for accommodation, travel, meals, mileage, etc.) or whether for other concepts, have a direct impact on the management of public resources.

On the other hand, their expectations of privacy should be the same as those that any public office in the administration may have, and in this sense it should provide that the amounts that may be received for any retributive concept may be subject to the citizen scrutiny.

However, the claimant requests the supporting invoices for the amounts paid to meet the general manager's expenses.

These invoices could constitute the supporting documentation for the realization of expenses at the expense of the subsidies granted by the different administrations, patrons of the Foundation, for the realization of its activities. This would occur if the subsidized actions include any expenses in per diems and other indemnities or compensations that the general manager may receive in the exercise of the functions necessary for the realization of the subsidized project or activity.

Articles 6 and 7 of Royal Decree 1619/2012, of November 30, which approves the Regulation regulating invoicing obligations, determine the content of the invoices.

In accordance with these precepts, 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.

Make it clear that in matters of administrative contracting, article 13.1.d) of the LTC obliges the Administration (remember that the Foundation has the qualification of public administration for the purposes of this Law, articles 3.1.b) and 2.1 .f) LTC), to publish the signed contracts indicating, among others, the object, the amount and the identity of the successful bidder. This obligation covers all contracts, including minors, and regardless of whether the successful tenderer is a legal or natural person. Therefore, access to the identity of the hired professional in the case that he is a natural person (legal entities are outside the scope of application of the data protection regulations), should not pose any inconvenience from the point in view of the right to the protection of personal data.

Beyond this, the invoices must include the identification of the type of goods or services provided. It should be noted that if it is a bill for a meal in a restaurant, in addition to stating the name of the restaurant, it may include details of the menu. If it is about the purchase of a plane ticket, it may contain the details of the flight (origin, destination, dates and times). In this sense, it cannot be ruled out that there are cases in which the information contained in these invoices for locomotion expenses, restaurants, accommodation or other representation could seriously affect the privacy of its holder, contain specially protected data (Article 9 of the RGPD), affect your personal and family privacy, or even compromise your personal security.

Thus, by way of example, the fact of having information on certain expenses that a person has made, whether for the purchase of plane or train tickets, whether for stays in hotels or meals in restaurants, allows knowing not only the cost of the expense, but also the detail of where you traveled and on what date, where and what you ate, and where you stayed. This information considered in isolation can already offer information in itself, for example, about certain

aspects that are part of intimacy or about following a certain diet linked to a health problem or even to religious convictions. But in addition, information that can have a relative significance in isolation, can end up describing a pattern of behavior, a case that allows us to know a habit, for example, when the person in question is a regular of a certain establishment, of a certain means of transport, etc., which could affect in a highly intrusive way your right to the protection of personal data, affect particularly protected data or, even, your personal and family privacy, being able, in some cases, to even affect the your personal safety.

Article 21 of the LTC expressly provides that the right of access to public information may be denied or restricted if the knowledge or disclosure of the information involves harm due to, among other aspects, the privacy of the affected (section 1.f)).

Article 23 of the LTC expressly provides that "requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the "affected expressly consents to it by means of a written document that must accompany the request."

Article 24.2 d) of the LTC also establishes, as an element to be taken into account in the weighting of rights, the fact that access may affect people's safety.

If any of the aforementioned cases occur, it cannot be ruled out that, depending on the type of information and the effects that its disclosure could have on the affected person, access must be denied or limited.

The detail of personal information that can be contained in the supporting invoices for this type of expenses means that the possibility of accessing them must be assessed with much more caution than it should in principle be done with respect to other supporting invoices for services provided. It is obvious that the degree of impact on the affected person's privacy can be much more intense in these cases.

The claimant shows his dissatisfaction with the lack of information in relation to the concepts that would justify the amounts received by the general manager for per diems and other expenses. In fact, in the claim form and in relation to this subject, he adds that it is necessary to specify what these expenses and per diems received consist of and their totality.

The principle of minimization (Article 5.1.c) of the RGPD) requires that the data to be processed are adequate, relevant and limited to what is necessary for the purpose for which they must be processed. Thus, from the point of view of the right to data protection, it is considered that access to that personal information that is essential to achieve this objective of controlling public expenditure should be facilitated.

In this sense, and as has been pointed out, it may be relevant for the purposes of evaluating the management of public resources to know the origin or cause that motivates the expenditure, and that is why the claimant should be able to access in a detailed manner to expenses for meals, mileage, travel (including for example the destination or reason for travel), hotels or any other

could have been generated, referring to the whole year, to the quarter or even broken down by months. With this data, the claimant could form a critical opinion on the reasons behind the payment of allowances or compensation paid to the general manager.

Beyond this, the invoices can incorporate, as noted, additional detailed information (name of the restaurant, details of what was eaten or drunk, origin, destination, date and time of the flight or train booked, etc. ). Apart from the fact that this type of information may in certain cases affect particularly protected data, the privacy of the affected person or their security -circumstances that would in themselves justify the limitation of access-, it must be emphasized that the set of information that can be obtained through the invoices generated for two consecutive years (2015 and 2016) for allowances or compensatory allowances for expenses incurred by a person could reveal patterns or habits of conduct that would allow obtaining a profile of that person.

Taking into account these elements and given the purpose of controlling the management of public resources that the access pursues, it does not seem that the disclosure of the details of personal information that may be contained in the invoices is justified, which is why it is considered that access to these documents must be limited.

From all the above, it is concluded that the right to data protection would not prevent the claimant from providing the breakdown of expenses in per diems and compensations by year, quarter or month. Obtaining this information would make it possible to achieve the goal of transparency pursued, without having to sacrifice beyond what is necessary the privacy of the affected person, a fact that could occur if the invoices were released.

## VII

With regard to access to the supporting invoices for the expenses of the item "Independent Professional Services" corresponding to the year 2016.

The right to data protection extends to natural persons or groups of natural persons, identified or identifiable, about whom it is intended to obtain personal data, and not to information relating to legal persons. 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.

Article 3.1 e) of Law 9/2017, of November 8, on public sector contracts, by which the Directives of the European Parliament and of the Council 2014/23/EU and 2014 are transposed into the Spanish legal system /24/UE, of February 26, 2014 (hereinafter, LCSP), considers public foundations to be part of the public sector for the purposes of this Law. And it provides that for the purposes of this Law, public foundations are understood to meet any of the following requirements:

"1st That they are constituted initially, with a majority contribution, direct or indirect, from one or several entities integrated in the public sector, or that they receive the aforementioned contribution subsequent to their constitution.

2nd That the foundation's patrimony is made up of more than 50 percent of goods or rights contributed or transferred by members of the public sector on a permanent basis.

3rd That the majority of voting rights in its board of trustees correspond to representatives of the public sector."

Taking into account the consideration of the public sector foundation of the claimed entity, it is subject to the public sector contract regulations.

In accordance with additional provision 32a of the LCSP):

"1. The contractor will have the obligation to present the invoice issued for the services rendered or goods delivered to the corresponding administrative register for the purposes of its referral to the administrative body or unit to which the processing corresponds of the same

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.

In accordance with the content established in articles 6 and 7 of Royal Decree 1619/2012, of November 30, which approves the Regulation regulating invoicing obligations, in general, it is foreseeable that these contain the data listed in these receipts: 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 for the determination

of 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 documented operations were carried out, or on which the advance payment was received

when it is different from that of issuing 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 contained 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 and make a weighting between the different rights and interests at stake.

Noting that in matters of recruitment, article 13.1.d) of the LTC obliges the Administration (remember that the Foundation has the qualification of public administration for the purposes of this Law, articles 3.1.b) and 2.1.f) LTC), 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 tenderer, the duration, the number of tenderers, the award criteria, the comparative list of offers and the respective scores, and also the agreements and technical reports of the contracting 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.

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.

The invoices are the documents that, once drawn up by the Administration, justify the payment by it to the contractor. It constitutes, in short, information directly related to the management of the expenditure incurred and could be relevant for the purposes of being able to detect possible irregularities in the processing of the procurement files to which it is subject submitted the Foundation.

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 it cannot be ruled out that this information referred in principle to the company, not end up affecting the employer and his privacy.

Access to the invoices issued by professionals in contracting with public sector entities could be relevant to verify the appropriate application of public resources to the purpose and object of the contract awarded to the professional.

In this case, the invoices could also constitute supporting documentation of the justification of the subsidies received by the Public Administrations (employers of the Foundation) that have contributed funds to the Foundation for the achievement of the objectives or actions set.

In the matter of subsidies, article 15.1.e) LTC establishes the obligation to publish, on the website of the Administration granting the subsidy, "the justification or withholding of accounts by the beneficiaries of the subsidy or aid granted". This provision should not be understood as a general authorization to publish each and every document provided by the beneficiaries of a certain subsidy or public aid. It could be sufficient to publish the audit report resulting from the internal control or review of the supporting documentation provided by the entities

beneficiaries of the subsidy that is carried out by the granting administration with the purpose of proceeding with the payment of said subsidy or, where appropriate, its revocation.

All in all, beyond the supporting information that must be published on the transparency portal, access to the invoices would make it possible to check whether there is supporting documentation of the expenses incurred against the grants granted and whether the services contracted are in line with the purpose of the grant, information that would be used to evaluate, not only the actions of the Foundation, but that of the same Administrations that grant the grants.

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, in application of the principle of minimization (article 5.1.c) RGD) and 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, NIF, telephone number, address, e-mail or current account number of the affected persons).

Remember in this sense, that article 25 of the LTC, expressly provides for the option of facilitating partial access to the requested documentation when any of the limits of 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."

## VIII

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 Foundation, 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 right to data protection does not prevent the person claiming individual information on the remuneration received, for all concepts, including per diems and compensations received by the general manager and by those other workers who occupy positions of trust or 'special responsibility in the management of public resources and participate in the decision-making process. On the other hand, with respect to the rest of the staff, the information must be given in an aggregated form, grouped into professional groups or categories.

Nor would it prevent access to information on the breakdown by concept of the per diems or allowances received by the Director General and the overall amount of each of them, referring to the year, the quarter or the month. On the other hand, it would be necessary to limit access to the supporting invoices for these expenses, given that the disclosure of personal information they may contain would imply an interference in the privacy of the affected person that is not justified for the purpose of controlling public expenditure pursued.

The right to the protection of personal data does not prevent access to the supporting invoices for the expenses of the "independent professional services" item requested by the claimant, without prejudice to the fact that prior to access to any invoice should omit those identifying data such as the NIF, telephone, address, email or no. 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, 17 October 2018