

Ref.: IAI 44/2018

Claim: 284/2018

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 submitted by a citizen against a City Council for the denial of access to information related to the sale of tickets for the XVIII Mediterranean Games.

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 284/2018 submitted by a journalist in relation to the partial denial of access to the supporting information for the sale of tickets for the XVIII Mediterranean Games.

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 June 26, 2018, a citizen wrote to a City Council in which he stated that he had seen in the media that there could be a series of irregularities in the sale of tickets for the ceremony of inauguration of the XVIII Mediterranean Games and requests, under the protection of the Transparency Law, the following information:

- 1- Documents, receipts and invoices for ticket sales of the opening ceremony: price, location and buyer of each of them.
- 2- Documents showing how many tickets went on sale, at what price and what is the location, within the Estadi del Nàstic, of each location that had to be sold.
- 3- Document from the awarding company certifying how many tickets were put up for sale, at what price and where in the Nàstic field.
- 4- Details of ticket sales day by day after they go on sale to the public (May 16 or 17, 2018) through the awarding company.
- 5- Details of day-by-day ticket sales after they go on sale to the public (May 16 or 17, 2018) through any other medium or body other than the awarding company.
- 6- Recipients of the ticket packages (price and how many each had and where these tickets were located) that were not put up for sale due to commitments of all kinds (invitations to sponsors, international Olympic committees, etc.)
- 7- Details of the ticket packages that were sold in blocks to different associations, political parties, entities or any grouping: number of tickets, days they were sold, location and price.
- 8- Actual income from the sale of tickets: detail by areas of the field and recipients.

9- Total value of the tickets that were ceded either by invitations to sponsors, committees olympics, etc. Breakdown by recipients of the value of the same.

1. On July 3, 2018, the City Council transfers the request to a Foundation, understanding that it is the entity competent to respond to the request and communicates this to the claimant.
2. On July 30, 2018, the applicant filed a complaint with the GAIP against a City Council for the lack of response to the information request.
3. On September 25, 2018, the GAIP requested this Authority to issue a report in relation to the claim presented.
4. On October 11, 2018, the GAIP sent this Authority the report issued by the City Council in relation to this claim and the statement of objections to this report submitted by the claimant.

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 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.b) of the LTC, relating to the investigation or sanction of criminal, administrative or disciplinary offences, the application of which could lead to the claimant's right of access being denied or restricted for the purposes of protecting the investigation.

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.

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

Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), is applicable from May 25, 2018 (article 99), and is therefore the current rule applicable in this case, given the date of submission of the access request (June 26, 2018).

In accordance with article 2.1 of the RGPD, this applies to the fully or partially automated processing of personal data, as well as to the non-automated processing of personal data contained or intended to be included in a file.

Article 4.1 of the RGPD defines the concept of personal data as "any information about an identified or identifiable natural person ("the interested party")", and considers as an identifiable natural person "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person."

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency). In order for this treatment to be legal, one of the conditions of article 6 RGPD must be met, and also some of those provided for in article 9 RGPD in the case of specially protected data called "special categories of data."

Article 6 of the RGPD establishes that it is necessary to have a basis that legitimizes the treatment, either the consent of the affected person, or any of the other circumstances provided for, such as that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (6.1.c)), or that "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment" (6.1.e)), and this is recognized on a legal basis in accordance with the provisions of sections 2 and 3 of the same article.

Article 86 of the RGPD provides that "The personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the member states

that they are applied in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation.”

III

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 complaint is lodged against the denial of access to certain information related to the sale and distribution of tickets to attend the opening ceremony of the XVIII Mediterranean Games organized by a Foundation.

According to the organization's statutes, published on the corporate website, the city council and the Spanish Olympic Committee are the founding patrons of the organization. According to the 2017 audit report available on this same portal, the City Council participates in the founding capital with a contribution of €12,000,000 and the Spanish Olympic Committee participates with a contribution of €3,000,000. Given the City Council's majority share in the entity's capital, we will start from the premise that the Foundation is, for purposes of transparency, a public sector foundation, and therefore, included in the entities listed in article 3.1.b) of the LTC. This being so, and exclusively for the purposes of the application of the Transparency Law, this foundation has the qualification of public administration 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.

The information related to the sale and delivery of tickets for the XVIII Mediterranean Games organized by the Foundation is public information for the purposes of article 2.b) LTC and, therefore, remains subject to the access regime provided for in 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 people affected would justify or not the limitation of the right of access to public information regulated in the LTC.

IV

The Foundation is established, in accordance with its statutes, with the purpose of organizing the XVIII Mediterranean Games. Within the framework of this organization, as can be seen from the contract signed on February 14, 2018 that appears in the file, the Foundation awarded to a company the integral management service of the sale and distribution of tickets for the event, for a 10% commission on the PVP of each ticket sold.

From the content of the administrative clauses and technical prescriptions available in the "contractor profile" of the Foundation (...) the following can be seen:

- By means of this "ticketing" contract, the successful bidder assumes the integral management of the service of issuing, managing and selling tickets for the XVIII Mediterranean Games. This service includes, among others, the design, production and issuance of all tickets; the integral management of the sale of multi-channel tickets and especially, via online and physical points of sale and distribution, prioritizing sales over the Internet, as well as making available to the Foundation the technological tool that manages the sales system 'entries, the characteristics, operation and security associated. (Point 1 of the PPT).
- Regarding the management of ticket sales, it is indicated as Sales channels: Internet through an online platform for ticket sales, (channel that is considered main) and various points of sale and distribution physical Among the general characteristics of the platform, it is provided that the tool must allow the Foundation to obtain all the economic and financial information regarding the sale of tickets, and that the system must allow payment only through means in line (credit or debit card, Paypal or bank transfer) (point 3.2.1. of the PPT).
- Two types of tickets are established: ticket with amount according to session and ticket with face value "€0". The latter must be delivered to the Foundation for its promotional actions among the population and its sponsors (point 3.2.2 of the PPT).
- Ticket prices vary depending on the discipline and the session, and correspond to the prices set for the different sessions in Annex 1 of this PPT. Although most facilities would have unnumbered tickets, for those with a greater number of spectators, such as the opening and closing ceremonies at the New Stadium (...) it is arranged that the tickets to attend will be numbered and distributed by blocks. Annex 1 consists of an excel document with the ticket prices and the revenue forecast for the sale.

In this context, the claimant requests access to certain information about the operation of selling tickets for the inauguration ceremony (points 1,2,3,4,5,7 and 8 of the request) information that could affect buyers, and on the other hand requests access to information on the recipients of the ticket packages delivered by the Foundation (invitations to sponsors or other entities (points 6 and 9 of the request).

Point out that the RGD extends its scope of protection to personal data understood as all information about an identified or identifiable natural person (Article 4.1 of the RGD). Therefore, the data of legal entities are excluded from this scope of protection, as specified by the RGD itself, establishing that "The protection granted by the present Regulation shall apply to natural persons, regardless of the processing of your personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details. (Recital 14).

Consequently, the limits provided for in the transparency legislation (articles 23 and 24 of the LTC) do not apply in cases where the buyers or recipients of the tickets that may be affected by the access are legal entities in to the extent that legal entities are not holders of the right to the protection of personal data.

Based on this initial premise, this limitation would only be applicable in the event that the information provided allows the direct or indirect identification of natural persons who may have purchased tickets or received invitations on an individual basis.

With regard to the data of natural persons, it does not seem that any of the information requested may contain particularly protected data (article 23 LTC and article 9 RGD), so it is necessary to apply what is provided for in article 24.2 of the LTC and make a reasoned weighting between the different rights and interests at stake:

"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. (...)"

When making this weighting, it is appropriate to distinguish between the information relating to the sale of tickets which would affect the people who have bought tickets, and the information relating to the free delivery of these tickets which would affect the recipients.

v

Regarding the information related to the sale of tickets (points 1,2,3,4,5,7 and 8 of the request).

The claimant requests access to the documents, receipts and invoices for the opening ceremony ticket sales: price, location and buyer of each of them (point 1 of the request).

By means of a letter dated September 19, 2018 addressed to the interested party in relation to a second request for access that this same person would have presented on August 2, 2018, the City Council points out that the Foundation cannot facilitate this information because it does not act in its power. He adds that the object of the awarded contract included the issuance of tickets (as stated in point 3.1.2 of the Technical Specifications), and therefore it is this company that issued the tickets. In this regard, he adds that the Foundation has not issued any receipts, invoices or tickets for the XVIII Mediterranean Games, and consequently cannot provide the aforementioned documents, and adds that despite not having the aforementioned information, the data relating to the buyers of each of the entries are personal data protected by the personal data protection regulations.

The person making the claim justifies access in case of any irregularities committed in the process of selling and distributing tickets. Specifically, in the written response to the report issued by the City Council addressed to the GAIP in relation to the present claim, the interested party states that as a result of a journalistic investigation carried out by himself and published in the newspaper Porta Enrere, there would be some groups of people of a certain ideology who would have expressed having tickets before they went on sale. Based on these facts and in order to be able to corroborate this information with data, the claimant insists on being provided with information on who bought the tickets and when. In this sense, it points to the fact that the date would appear on the invoice or receipt and it would be possible to know if there has been a favorable treatment.

The purpose of the transparency legislation 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).

Within this framework of transparency, the public must be able to evaluate the management carried out by the Foundation (in charge of organizing the event) in relation to the execution of the ticketing contract signed with a company (provider of the broadcasting service and sale of tickets), which should be carried out in accordance with the different criteria set out in the individual clauses and technical prescriptions as well as the agreements subsequently adopted based on their content.

In this sense, and for the purposes of checking possible irregular actions in the process of selling tickets, it is intended to access the supporting documentation detailing tickets sold for the opening ceremony. Taking into account that these are mostly sales made through an online platform, it is foreseeable that the corresponding receipt or justification has been generated once the payment has been made, which includes the entry number with the purchase price and location inside the Nou Estadi Gimnàstic (...), the name of the person making the purchase and the date on which it is made.

If what the interested party intends is, as he himself says, to check whether tickets were sold before the sales process began with the intention of favoring certain groups of people, it could be relevant to know the number of tickets sold, the price paid (variable according to the location within the stadium) and the date of purchase. This would allow the interested party to know whether due transparency has been acted upon in the process of selling tickets and to evaluate the management carried out in the organization of the event. On the other hand, it does not seem to be strictly necessary to achieve the purpose of control and evaluation of the management carried out by the organization of the event and for the purposes of transparency, to know the identity of the people who bought the tickets, who can or not match the people who eventually attended the event, given that they were not registered tickets.

From the point of view of these people, it is necessary to take into account what their privacy expectations may be, and in this sense it is not foreseeable that anyone who buys one or more non-nominative tickets to attend a sporting event through the online platform of the company has the possibility that this information will end up being disclosed.

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 should be facilitated to that personal information that is essential to achieve this objective of control and evaluation of the management of public resources by the Foundation.

Taking into account that the purpose of controlling any irregular actions by the body in charge of the organization, for the purposes of transparency, would be achieved without the need to know the identity of the buyers, and under the protection of this principle of minimization, it would be necessary to preserve the privacy of these people and omit the data of the people who could eventually be identified as buyers in the supporting documentation (invoice or receipt) of the purchase made. This, without prejudice to the fact that partial access can be provided after personal data has been anonymised.

The principles of data protection apply to any information relating to an identified or identifiable natural person, and as it follows from the RGPD (recital 26), these do not apply to the treatment of anonymous information, that is "information that is not related to an identified or identifiable natural person" nor "to data converted to anonymity so that the interested party is not identifiable, or ceases to be so."

Point out that access to public information prior to the dissociation of the personal data contained therein (anonymization under the terms of the new RGPD), so that it is not possible to identify the persons affected either directly or indirectly, is an option expressly provided for in article 15.4 of Law 19/2013 in establishing that "The right of access is exercised in such a way that the identification of the affected persons is prevented."

This same criterion can be extended to the information requested in points 4 (details of ticket sales day by day after the sale to the public on May 16 or 17, 2018) through the 'contracting company') and in point 5 (details of the day-by-day sale of tickets after they go on sale to the public (May 16 or 17, 2018) through any other means or body other than the awarding company) In principle these details

they should not include identifying information of the buyers, but if this is the case, it will be necessary to limit access to information that allows the identification of natural persons who buy.

The same must be said regarding the information requested in point 8 of the application "Actual income from the sale of tickets: detail by areas of the field and recipients". To the extent that these recipients are physical persons, and for the reasons stated, it will be necessary to limit access to the identifying information of these persons.

With regard to the information requested in point 7 "detail of ticket packages that were sold in blocks to different associations, political parties, entities or any grouping (number of tickets, days they were sold, location and price) ", just remember that the data protection regulations are not applicable to legal entities. Therefore, access to information on the sale of tickets to entities with their own legal personality such as associations, political parties, etc. it would not pose any inconvenience from the perspective of the right to the protection of personal data.

Finally, access to the information requested in point 2 "documents showing how many tickets went on sale, at what price and what is the location within the Estadi del Nàstic, of each location that had to sell" and in point 3 "document (...) certifying how many tickets were put up for sale, at what price and where in the Nàstic field", must not affect personal data, beyond the mere identification data of the people who intervene and sign the respective documents in response to the access request.

In general, and by application of article 24.1 of the LTC, " Access to public information must be given if it is information directly related to the organization, operation or public activity of the "Administration that contains merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail."

In this case, the identification data (name and surname and position) of the position or employee of the Foundation or of the company awarded the contract that appear as signatories and responsible for the documentation that is eventually delivered would be included.

VI

Regarding access to information about the "recipients of ticket packages (price and how many they each had and where these tickets were located) that were not put on sale due to commitments of all kinds (invitations to sponsors, international Olympic committees, etc.) (point 6), and on the "Total value of the tickets that were sold either by invitations to sponsors, Olympic committees, etc." with a "breakdown by recipients of the value of the same." (point 8), the following assessment must be made.

Remember once again that the RGPD only extends its scope of protection to the data of identified or identifiable natural persons (Article 4.1 of the RGPD), so the data of individuals are excluded from this scope of protection legal

Therefore, access to ticket packages that have been placed in the hands of sponsoring companies or any other entity with its own legal personality would not be affected by data protection regulations, and consequently there should be no no inconvenience from this perspective in facilitating access to this information.

Having said that, and in the event that the recipients of the ticket packages are natural persons, it should be borne in mind that in the case of tickets delivered to sponsors, this delivery could be part of the consideration of the signed sponsorship contract.

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 be published "d) The contracts signed, with the indication of the object, the amount of the tender and award, the procedure used to contract and the identity of the successful tenderer, the duration, the number of tenderers, the award criteria, the comparative table of offers and the respective scores, and also the agreements and reports recruitment process technicians . 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. Taking these provisions into account, it does not seem that there could be any inconvenience in providing the claimant with the identity of the sponsor who may have received tickets as consideration for the sponsorship contract.

Beyond this specific case and for the rest of the tickets ceded, it must be taken into account that the Foundation carries out with these cessions acts of mere liberality with a cost that can be quantified by the economic value of the ticket.

Within the framework of the Administration's subsidizing activity, the transparency legislation provides for the publication of the subsidies and public aid granted, with the indication of the amount, the object and the beneficiaries. (Article 15.1c) of the LTC).

Considering that the transparency legislation itself expressly provides for the publication of the identity of the beneficiaries of subsidies (except for those granted for reasons of social vulnerability), it does not seem that there could be reasons to deny the claimant access to the identity of those people who have benefited from a discretionary act of mere liberality by an entity that is mostly invested with public funds.

From the point of view of the people benefiting from invitations or tickets with zero cost, and with regard to their privacy expectations, these people should foresee the possibility that the Foundation, as an entity invested with public money and in charge of the 'organization of the event, must provide information not only on the value of the tickets given free of charge but also on who has benefited to the detriment of the rest of the people who had to buy them, given that this may be relevant to check the ticket distribution criteria used by the organizing body.

This assessment must be done differently in the event that the recipients are part of groups that are in a situation of social vulnerability. Taking into account the protection that the Transparency Law itself grants to these groups, it does not seem that access to the identity of those people who may have received tickets to be part of these groups is justified. Therefore, access to your identity will need to be limited.

Outside of this assumption, it is considered that the right of access to information should prevail in this case to the detriment of the right to privacy of the recipients of these entries. Even so, it would be necessary to transfer 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 access request, or 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.

Finally, 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 claimant's access to the identity of the natural persons who purchased the tickets for the opening ceremony of the XVII Mediterranean Games does not seem justified in order to achieve the purpose of transparency for the purpose of monitoring the actions by the entity in charge of the organization. Therefore, it would be necessary to provide information related to the sale of tickets prior to anonymization of their data. There would be no problem in providing the merely identifying data of the positions or employees contained in the requested documentation.

Access to the identity of the natural persons who are the recipients of the tickets given by the Foundation as consideration for a sponsorship contract or as a free title would be justified for the purposes of transparency, except in cases where it concerns people who are part of vulnerable groups and in the event that there are specific circumstances alleged in the hearing procedure provided for in articles 31.1 and 42 of the LTC that may limit access.

Barcelona, 31 October 2018