

Claim: 335/2018

Report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to the claim submitted by an association for the denial of access to information on the beneficiaries of housing subsidies and aid

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 335/2018 presented by an association against a City Council for the denial of 'access to information on the beneficiaries of rental assistance, assistance for the payment of rental income debts, assistance for people who have lost their homes, sheltered housing under the rental regime and emergency benefits of the help to pay the mortgage installments

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 18, 2018, an association submitted a letter to a City Council requesting access to:

"The identification data (name and surname) of each of the beneficiaries of the benefits listed below, and of the amounts they have received, by year, from 2013 to May 2018:

1. Rent aid or subsidy, of both types.
2. Aid for the payment of rental income debts
3. Aid for people who have lost their homes.
4. Sheltered housing under a rental regime.
5. Emergency benefits of the aid to pay the mortgage installments."

2. On June 28, 2018, the City Council issued a resolution denying access.

3. On September 12, 2018, the association filed a claim with the GAIP against the City Council for denying access to the requested public information.

4. On October 10, 2018, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, in relation to the claim presented.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCA is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must issue a report to the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected.

Therefore, any other limit or aspect that does not affect the personal data contained in the requested information is outside the scope of this report, as would be the case of the limit established in article 21.1.f) of Law 19/2014, of December 29, on transparency, access to public information and good governance, relating to privacy and other legitimate private rights, the application of which could lead to the right of access of the claimant entity must be denied or restricted.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance.

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

The claim is lodged against the denial of access to information on the identifying data (name and surname) and the amount received by the beneficiaries of the rent aid or subsidy, the aid to pay rent debts of rent, benefits for people who have lost their homes, sheltered rental housing and emergency benefits of help to pay mortgage installments, from 2013 to May 2018 actuality

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) in article 18 establishes that "people have the right to access public information, to which it refers article 2.b, in an individual capacity or in the name and representation of any legally incorporated legal person" (section 1). Article 2.b) of the LTC defines public information as: "the information prepared by

the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law". In similar terms, Law 19/2013, of December 9, on transparency, access to public information and good governance, (hereinafter, LT) is pronounced.

Thus, the information referred to in the claim is "public information" for the purposes of transparency legislation and remains subject to the access regime provided for in this regulation.

The entity requesting access is an association, which would be legally constituted and endowed with its own legal personality for the purposes of being able to exercise the right of access recognized in this article 18 of the LTC.

However, the right of access to public information may be denied or restricted for the reasons expressly established in the laws (Article 20 et seq. of the LTC). Specifically, and with regard to information that contains personal data, it is necessary to assess whether or not the right to data protection of the affected persons justifies the limitation of the right of access to public information regulated in the LTC which the claimant entity invokes.

Article 23 of the LTC establishes the following:

"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 affiliation, 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 party expressly consents by means of a written which must accompany the application."

In the case at hand, it seems clear that the access requests being analyzed do not entail access to specially protected data referred to in Article 23 of the LTC, given that, in principle, it only deals with identifying data (name and surname), amounts and type of aid. But, if this data is related to the requirements that are requested to be able to obtain these aids, it could be deduced, for example, if the beneficiary is a disabled person. Therefore, access to this data could lead to the knowledge of specially protected personal data.

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

"2. If it is other information that contains personal data not included in article 23 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the affected people To carry out this weighting, the following circumstances must be taken into account, among others: a) The elapsed time. b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people."

Therefore, it will be necessary to weigh up the different rights at stake, in order to decide which should prevail and to what extent. Therefore, it will be necessary to examine the intended purpose, the

possible affected persons, the nature of the personal information requested and the specifics with which the request has been made.

III

In the case at hand, the entity requests access to public information on social housing programs for the last five years (from 2013 to May 2018). Specifically, request access to:

- "1. Rent aid or subsidy, of both types.
2. Aid for the payment of rental income debts 3. Aid for people who have lost their homes.
4. Sheltered housing under a rental regime.
5. Emergency benefits of the aid to pay the mortgage installments."

Therefore, in attention to the information requested and for the purposes of making a weighting, it is necessary to bear in mind that it requests data on subsidies and public aid, in which the principle of publicity governs.

In this sense, article 15 establishes a detailed regulation on the advertising of subsidies and public aid, in the following terms:

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

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

As regards housing aid, article 137 of the Statute of Autonomy of Catalonia establishes the exclusive competence of the Generalitat de Catalunya in matters of housing. This competence is deployed in Law 18/2007, of December 28, on the right to housing (hereinafter Law 18/2007) which forms the regulatory framework by which this matter must be governed and, especially, the official protection housing and public housing aid.

Article 72 of Law 18/2007 states that the department responsible for housing must establish a system of benefits for the payment of rent for people and cohabitation units resident in Catalonia "with low incomes and moderates to whom the cost of housing may put them at risk of social exclusion

residential or hinder the process of social integration" (article 72.1) and regulates benefits for the payment of rent and special emergency benefits for the payment of rent or mortgage amortization installments in special situations (article 72.2 a) ib)).

Decree 75/2014, of 27 May, of the Plan for the right to housing, regulates social housing programs (chapter 2) whose purpose, among others, is to help people at risk of exclusion social group who have difficulties accessing housing or paying rent or mortgage repayments, which could place them in residential social exclusion or hinder their social integration process.

Thus, Resolution GAH/921/2018, of May 10, which approves the regulatory bases for the granting, under competitive competition, of subsidies for the payment of rent, regulates the granting of subsidies for to the payment of the rent, to facilitate access to and permanence in a rental home for sectors of the population at risk of social exclusion.

Resolution GAH/867/2018, of May 2, which approves the regulatory bases for the granting, in a competitive competition, of benefits for the payment of rent intended for specific groups, regulates the conditions for requesting the benefits for the payment of rent regulated in article 72.2.a) of Law 18/2007, of December 28, on the right to housing, intended for specific groups.

Resolution TES/7/2016, of January 4, establishes the conditions for access to special emergency financial benefits to deal with emergency situations in the field of housing, and the procedure for granting them.

From the aforementioned regulations, it is clear that the purpose of these grants is to enable the applicant and their cohabitation unit to stay in their home, to prevent social exclusion that may result in the loss of home that constitutes the usual and permanent residence.

Therefore, the recipients of these aids are particularly vulnerable people who are in a situation of residential exclusion (situation in which people or family units who do not have a home, or have lost their property or possession immediately from the property that is their home, and who do not have an alternative home or sufficient income to obtain a decent and suitable one) or at risk of residential exclusion (people and family units who have a lower income to 2 times the Income Sufficiency Indicator (IRSC), if it is about people living alone, or an income of less than 2.5 times the IRSC, if it is a cohabitation unit, or an income of less than 3 times the IRSC, in case of disabled or highly dependent people).

These grants respond to particular conditions and needs. They are granted based on the income of the applicant's cohabitation unit and specific personal and family situations that must be proven through the provision of a series of documents that may contain special categories of data under the terms of the Article 9 of the RGPD (ethnic or racial origin, health, etc.) or data included in this category with a specific regime (those relating to convictions or criminal offences), or data deserving of a special reservation or confidentiality in attention to the concurrence of certain qualified circumstances, such as for example minors' data, data related to gender violence, unemployment, being the recipient of

benefits and other subsidies, dealing with single-parent families, existence of disability situations, legal proceedings, etc.

In this case, the entity requests to know the identity of the beneficiaries (name and surname), as well as the amount received for these concepts. Although it does not request particularly protected data or included in the category with a specific regime (those relating to administrative or criminal offences), it is information deserving of a special reservation or confidentiality, since, it must be borne in mind that this information put in relation to the purpose of the public housing adjustments requested, would lead to the disclosure of the existence of a situation of special need. Therefore, these circumstances would act as a limit to the publication of the identity of the beneficiaries of official protection housing aid under the rental regime and public housing aid, with an indication of the amount received, what reference the LTC (article 15.1 c)).

On the other hand, in accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses what is the purpose he is pursuing and ultimately the reasons why it is interesting to know the information adds a very important element to take into account as a weighting criterion.

In this sense, article 1.2 of the LTC, provides that the purpose of the transparency law "is to establish 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".

The applicant entity alleges that it intends to "ensure that the Administration is making adequate use of the social cohesion instruments referred to and that people are not receiving aid or benefits because of their personal ties with the political leaders".

According to this, and in relation to the provisions of article 1.2 of the LTC, it must be understood that the request for information should be framed in the purpose of evaluating and controlling the performance of the 'Administration.

In this sense, the mere allusion to possible irregularities in the granting of housing adjustments, without providing any other additional information and in view of the nature of the aid linked to situations of vulnerability, cannot justify revealing the identity of the people who have turned out to be beneficiaries. It should be borne in mind that the purpose of these grants is precisely to prevent social exclusion that can mean the loss of the home that constitutes the usual and permanent residence, and that an indiscriminate disclosure of the identity of the beneficiaries could go precisely against for this purpose, causing a stigmatization of these people.

In this case, it could be understood that the right of access requested by the entity could be satisfied by providing it with the same information that the Administration must publish in compliance with the obligation to actively advertise their subsidized activity in referred to in article 15 of the LTC and in the same terms provided for in that precept, this is with aggregated information or with an anonymized list of the grants awarded for this concept with an indication of the amount received, whenever it is not possible relate to specific people.

Thus, with the information available and making a general weighting, it does not seem that, from the point of view of data protection, the

the entity's right to access the identity of the people who have turned out to be beneficiaries of housing aid and subsidies and the amount that each of them has received.

conclusion

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

Barcelona, 31 October 2018

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