

Ref. : IAI 50/2018

**Claim: 363/2018**

**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 public body for the partial denial of access to information on the beneficiaries of housing aid and subsidies.**

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted by a citizen against a public body for the partial denial of access to information on the beneficiaries of housing aid and subsidies.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the Legal Advice I issue the following report:

#### **Background**

1. On May 18, 2018, a citizen submits a request for access to public information to a city council in which he requests the identification data (name and surname) of the beneficiaries and the amounts received , by years, from 2013 to May 2018, of the following services or grants:

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 May 28, 2018, the City Council sent the request to the competent department of the Generalitat, so that a response is given regarding the aid in points 1, 2 and 3 given that it is aid granted by the Generalitat, and this is addressed to the responsible public entity

3. On September 3, 2018, the entity issues a resolution by which the partial estimate is agreed, in the sense of providing the interested party with a list with the initials of the first and last names of the beneficiaries as well as a part of the DNI figures as well as the amounts received by year, from 2013 to May 2018.

Access to the identity of the beneficiaries is denied under the protection of articles 15.1.c) and 23 of the LTC, on the understanding that this is aid expressly addressed to people at risk of residential social exclusion (article 72 of Law 18/2017) and therefore socially vulnerable.

4. On October 2, 2018, the interested party filed a claim with the GAIP against the entity considering that it should be able to have the first and last names and not just the initials of the beneficiaries.

Specifically, in the letter accompanying the complaint it is briefly alleged that the right of access must have a wider scope than the provisions that can be made by the transparency legislation in the matter of active advertising, and that the aid to which it is intended to access should not be considered in his opinion within the assumption of public aid granted for reasons of social vulnerability.

It is also alleged that this type of provision is, as a general rule, subject to the principle of competition and therefore transparency, which obliges the publicity of the lists of those admitted, at least to those interested in the procedures and to the rest of the citizens through the right of access.

In this sense, it is added that the information requested is published by other Autonomous Communities and that Catalonia had been doing so at least until 2011.

It is pointed out that the request is made on merely identifying data included and in no case on specially protected data.

Finally, it is emphasized that the purpose of the request is to be able to verify the identity of the beneficiaries in order to check that people are not benefiting who do not meet the requirements established to have personal, family or 'Partisan affinity with political leaders. This being the objective, it is considered that the partial information provided does not serve to fulfill this purpose.

In this same letter additional information is requested to that initially requested, now adding access to the NIF data and the municipality of residence of each of the beneficiaries, understanding that it is also merely identifying data of these people .

5. On October 18, 2018, the entity issued a report on its position in relation to the claim presented.

6. On October 26, 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 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 data protection

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.

Although the new RGPD has been in force since May 25, 2018 (article 99), in this case it governs the LOPD and its implementing regulation (RLOPD), given that this was the regulation in force at the time in which the pre-complaint access request was made (May 18, 2018). It should be borne in mind, however, that the conclusions of this report would not vary if the new European regulation were the standard of reference.

## 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).

The information related to the beneficiaries of aid or subsidies granted in the field of housing 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, according to

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 or not the right to data protection of the affected persons would justify the limitation of the right of access to public information regulated in the LTC that invokes the requesting person.

### III

The applicant claims from a public body the name and surname of all the beneficiaries of aid and subsidies for the payment of rent, for debts due to rental income, or for people who have lost their homes, and the amount perceived by years, from 2013 to May 2018.

Article 137 of the Statute of Autonomy of Catalonia establishes the exclusive competence of the Generalitat of Catalonia 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 place them at risk of residential social exclusion or hinder the process of social integration" (article 72.1) and regulates the benefits for the payment of rent and the benefits of special urgency 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.

In this context, 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, provides that these " they aim to regulate the granting of subsidies for the payment of rent, in a competitive public competition regime, to facilitate access to and permanence in a rental home to sectors of the population at risk of social exclusion." (Section 1 of the "Object" Annex).

In the same vein and with regard to aid for the payment of rental income, or for people who have lost their homes, Resolution TES/7/2016, of January 4, establishes the conditions for access to the financial benefits of 'special urgency to deal with emergency situations in the field of housing, and the procedure to grant them. The purpose of these grants is to enable the applicant and his cohabitation unit to remain in the home, to prevent the social exclusion that may result from the loss of the home that constitutes the residence

usual and permanent. These benefits are aimed at people who are at risk. (Section 1 of the Annex "Object and purpose")

Taking into account the regulatory framework of the subsidies and aid to which access is sought, and that the information requested is limited to the identification data (name and surname) of the beneficiaries, the type of aid and the amount received, in principle it does not seem that access could affect specially protected data referred to in article 23 of the LTC:

"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."

However, the entity points to the fact that in this type of subsidies or aid granted to people in situations of social vulnerability, the dissemination of information about the beneficiaries could lead to the knowledge by third parties of data that is particularly protected in the terms of article 7 the LOPD, that is, relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life.

This circumstance could occur if the data provided could be related to the specific requirements that are requested in order to obtain these aids, and from these requirements it could be deduced, for example, that the beneficiary is disabled. To the extent that this is the case, and by application of article 23 of the LTC, it would be necessary to limit access to information that allows the identification of the beneficiaries.

#### IV

Beyond these cases in which personal information of a particularly protected nature can be inferred through the information provided in relation to the requirements of the calls for grants or aid in question, access is governed by the provisions of article 24.2 LTC:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. 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.

(...)"

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

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

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

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

The dissemination of this data in the electronic offices and websites of the obliged subjects (article 5.1 Law 19/2014), that is to say, on the Internet without any type of access restriction, entails, from the point of view of the data protection, a much more direct impact on the right to privacy of these people. It should be borne in mind that the personal information disseminated through this means can be consulted by anyone, a fact that, given the nature of public aid, can facilitate the preparation of socio-economic profiles, linked to situations of vulnerability, of the holders of 'this data.

The entity highlights that the recipients of these grants are people who are at risk of residential social exclusion in the terms of article 72 of Law 18/2007, and taking this into account, facilitates the interested party a relationship with the data published in relation to these grants, consisting of the initials of the beneficiaries, the last four digits of the ID number and the amount received in each of the years requested.

The person making the claim understands that the assumption of social vulnerability does not apply, by stating that the housing problem in Catalonia is endemic and affects all layers of society, which means that, in his opinion, the risk of exclusion residential to which the entity's resolution refers is a problem that affects the entire population.

Whatever the housing situation in Catalonia, the truth is that these are financial grants given to people with incomes that cannot exceed the amount established in the respective resolutions through the Indicator of Catalunya Sufficiency Income (IRSC). This is an economic value that ends up determining the threshold from the

which citizens have access to a series of social benefits to cover the situations of need in which they find themselves, in accordance with the provisions of Law 13/2006, of July 27, on social benefits of an economic nature.

It is clear from the content of the resolutions that protect the granting of this type of aid that they 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 a recipient of benefits and other subsidies, dealing with single-parent families, judicial proceedings, etc.

It is, therefore, information deserving of a special reservation or confidentiality, since, it must be borne in mind that this information placed in relation to the purpose of public adjustments in the matter of housing, would lead to the revelation of the existence of 'a situation of special need. It seems clear that these circumstances would act as a limit to the publication of the identity of the beneficiaries of these aids, with an indication of the amount received, referred to in the LTC (Article 15.1.c)), but they could also act as a limit to the citizen's right of access (article 18 LTC) - which is configured, according to the preamble of the same LTC, as a right that complements the information that the citizen can obtain through transparency - in if the relevance of the specific identification of these people is not sufficiently proven.

In accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses what is the purpose he pursues and ultimately the reasons for which he is interested knowing the information adds a very important element to consider as a weighting criterion.

The claimant seeks access to the requested information in order to audit or verify whether there has been distribution of money to people who do not meet the requirements and with personal, family or partisan ties to the political leaders, a claim that in principle should be framed in the purpose of evaluation and control of the Administration's performance in the terms of article 1.2 of the LTC.

Now, the mere allusion to possible irregularities in the granting of housing adjustments, without providing any other additional information, cannot justify revealing the identity of the people who have turned out to be beneficiaries of aid that have been perceived in attention to situations of social vulnerability. This access is requested in a generalized way with respect to all types of aid related to the payment of housing and would affect indiscriminately a large number of people.

The purpose of these grants is precisely to prevent the social exclusion that can mean the loss of the home that constitutes the usual and permanent residence, and a revelation

indiscriminate identification of the beneficiaries could go precisely against this purpose, causing a stigmatization of these people.

On the other hand, the fact that the same transparency law has chosen to preserve the privacy of the beneficiaries of grants or aid granted due to vulnerable situations means that these people can have the expectation that their identity will not be disclosed to third parties in an indiscriminate manner to fulfill the purposes of transparency and without further justification than the allusion to possible irregularities that may have been committed by public officials.

For all this, it is considered that access to the first and last names or any other information that allows the direct or indirect identification of the beneficiaries of the subsidies or aid claimed would not be justified.

This without prejudice to the claimant's right of access to the information that the Administration must publish in compliance with the obligation to actively advertise their subsidized activity 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, as long as it is not can relate to specific people.

For the purposes of proceeding with the anonymization of the information, it must be agreed that in order for it to be considered sufficient, in terms of data protection legislation, it is necessary to guarantee that the information provided cannot be related to an identified or identifiable natural person. Thus, anonymization would require the removal from the document 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 but the data that can be obtained by other means, assessing whether or not there is a real risk of re-identifying the affected persons without making disproportionate efforts.

There is also the possibility of providing information prior to pseudonymisation of the data, which in terms of article 4.5 of the new RGPD, consists of treating personal data in such a way that those provided can no longer be attributed to the data owner without using additional information, provided that such additional information is recorded separately, and is subject to technical and organizational measures aimed at ensuring that personal data is not attributed to an identified or identifiable natural person. This would be the option chosen by the entity when providing the claimant with the lists with the initials of the beneficiaries together with the last four digits of the DNI and the amount received for each year.

It should be clarified that the replacement of the beneficiaries' first and last names by their initials cannot be considered an appropriate technique of pseudonymization, given that in the current context of the development of new technologies, it cannot be ruled out that through the introduction of the initials of 'a person in a search engine on the Internet and having other information that can be related to these initials can end up identifying the affected person without making disproportionate efforts. Having the last four digits of the DNI increases the chances of identifying the holders.

In this sense, it would be more respectful of the data protection regulations to limit the information to the last four digits of the IDs and delete the initials.



## **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, anonymized or pseudonymized manner.

Barcelona, November 19, 2018

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