

Claim: 354/2018

Report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the denial of access and delivery of copies of the acts of the last two electoral processes held at an Official College.

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 a claim presented by an association against the official College, due to the lack of response to the request for a copy of the acts derived from the last two electoral processes held at the College, as well as the date of registration in the Register of Professional Colleges of the new governing boards.

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 July 13, 2018, the president of the association presented to the Official College a request for access to public information on the last two electoral processes held in this College, specifically:

"-All the minutes derived from each of the processes, from the meeting of the Government Board in which the call was decided, until the taking of possession of each of the new boards arising from the process.

-Date of registration in the corresponding Register of Professional Associations, of the composition of each of the new Government Boards."

2. On September 28, 2018, GAIP received the claim made by the association, for which it reiterates the request for access to information, due to the lack of response from the Official College.

3. On October 10, 2018, the GAIP requested a report from the Official College in relation to this claim.

4. On October 24, 2018, the Official College delivers to the GAIP a copy of the report made by the Board of Governors, dated October 22, 2018, in which it is not allowed to the claimant requesting the right of access.

5. On October 25, 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 (hereafter LTC), 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 request a report from 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 included in the requested information is outside the scope of this report.

It is therefore also outside the scope of this report the request of the person claiming to be considered as an interested party in the aforementioned administrative files, as well as in those that may be adopted later, and that by virtue of this, the agreements and resolutions that may be issued are notified.

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 (hereafter, LTC).

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 object of access requested by the claimant are the acts derived from each of the electoral processes for the election of the Board of Governors of the Official College, from the meeting of the Board of Governors in which to decide on the call, until the taking of possession of the new boards arising from the processes, as well as the date of registration in the corresponding Register of Professional Associations of the composition of each of the new Governing Boards.

Article 3.1.b) of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) includes in its scope of application, among others, "(...) professional associations and corporations under public law in what affects the exercise of their public functions".

Law 7/2006, of May 31, on the exercise of qualified professions and professional associations (hereinafter Law 7/2006), provides that professional associations "in their capacity as public law corporations and in the scope of their public functions, they act in accordance with administrative law and exercise the powers inherent in the public administration" (article 66.1).

As it is a professional College, it carries out both private and public activities. Thus, it is a public law corporation, in which its creation, organization and functions do not depend only on the will of the members, but also on what is determined by the legislator himself. In matters of the electoral regime, the legislator tries to protect a general public interest such as that the organization and action are democratic (STC 386/1993, of December 23) given the public functions that are assigned to them

entrusts

Thus, the electoral regime for the Board of Governors of the Official College is one of the material areas of the activity of public law corporations to which the right of access to public information can be applied given its link with the public functions entrusted to them.

Having said that, it must be borne in mind that, in accordance with article 18 of the LTC "people have the right to access public information, referred to in article 2.b, individually or in name and representation of any legally constituted legal person." And the exercise of this right "is not conditional on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of any rule".

In this case, from the documentation provided, the claiming entity does not prove that it has the status of an interested party in the electoral processes for which it is requesting information. However, it is known that it is a legally constituted association with its own legal personality for the purposes of being able to exercise the right of access recognized in the aforementioned article 18 of the LTC.

Article 2.b) of the 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 one 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.

In this case, the information requested by the entity is included within the concept of public information in the aforementioned article 2.b) of the LTC, and therefore remains subject to the access regime provided for in the transparency legislation.

However, the LTC itself establishes that, in those cases in which the public information that is sought to be accessed contains personal data (as happens in the case examined), for the purposes of granting or denying access, it will be necessary to have taking into account the limits established in articles 23 and 24 of the LTC.

III

First of all, the claimant requests access to "all the records derived from each of the processes, from the meeting of the Government Board in which the call was decided, until the taking of possession of each of the new meetings arising from the process."

Article 20 of the Statutes provides that "the governing body of the College is the Board of Governors" and establishes the functions of the Board of Governors, among others, to call elections (article 23.1 m)) . But beyond that, the information subject to access may contain information not only about the calling of elections, but also about the presentation of candidacies, the electoral roll, the constitution of the electoral board, the ballots, the form of 'accredit the vote, the vote by mail, the scrutiny and the taking of possession of the chosen candidates, etc.

Some of these acts may not incorporate personal data (for example, an agreement on the design of the ballots or on the possibility of voting by mail, etc.). In this case there would obviously be no impediment from the point of view of data protection regulations to facilitate access.

From the documentation in the file, it is not clear what the full content of the acts requested is. For the assumption that there may be specially protected data, it should be taken into account that 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 this sense, in the event that there was information specially protected from the collection in article 23 of the LTC about any of the affected persons, such as for example information about sanctions that could affect the right of passive suffrage of the candidates, the access to this data should be denied, unless the consent of the affected persons is available.

In relation to the rest of the personal data that are not considered specially protected, article 24 of the LTC provides:

"1. 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 it has to prevail over the protection of personal data or other constitutionally protected rights.

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the 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 claiming entity does not specify the purpose or reasons for which it wants the information it requests. Thus, according to the preamble of the LTC, transparency and the right of access to the

public information are consolidated as certain tools of social control of the Administration and its activity, for the benefit of greater democratic quality.

In this context, it could be understood that the purpose of the claimant entity, when requesting access to this documentation, is to control that the actions and organization of the College are democratic.

However, it should be pointed out at the outset that other matters may also appear in the proceedings of the Governing Board during the electoral period. Given the purpose of the access request, these other matters dealt with by the Board of Governors would not form part of the request and are therefore not analyzed in this report.

With regard to those items on the agenda that are included in the minutes and that are related to the electoral processes, given the terms in which the request is formulated (which generally refers to access to minutes of the electoral processes), in principle, although it is unknown what the content of these parts or points of the minute is, it seems predictable that there will be data such as the first and last names of the candidates, without it being possible to rule out other types of data, related to different incidents that could have affected the electoral process.

There may also be data related to the people who participate in the organization of the electoral process. Thus, in accordance with articles 32 to 53 of the Statutes of the Official College, which regulates the electoral process of the College, in general, it is foreseeable that these acts contain, among others, the data of the members of the governing bodies or the College that intervene in the exercise of their functions, as would be the case of auditors (article 40 of the Statutes), of the members who make up the electoral board (article 37.3 of the Statutes), the designation of the persons that intervene in the control and scrutiny of voting (article 48 of the Statutes). In this case, it would be identifying data (name and surname and position) as participating members in the exercise of their functions. Therefore, and in view of the fact that there is no objection to the disclosure of this data that should prevail, in view of what is established in article 24.1 of the LTC, there can be no impediment from the perspective of the right to protection of data in providing this information.

However, with regard to access to the rest of the personal information of any other person who is identified in the acts of the electoral process, for example the candidates, it requires a prior weighting between the different interests at stake, provided for in the article 24.2 of the LTC.

Thus, with regard to the candidates, the acts may contain, among others, data on the identification of the candidates and their membership in a certain candidacy, on the requirements to be a candidate, on the reasons for the exclusion of a candidacy or of a candidate, on the proclamation of the chosen candidacy and taking possession or on the causes of termination of the members of the Governing Board.

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 acts that is essential to achieve the objective of controlling that the action and the organization of the College are democratic, such as the identity of the candidates and the composition of the new Governing Boards.

However, 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. Therefore, prior to access, those data should be omitted

that may be included and are unnecessary to achieve the goal of transparency pursued.

Remember in this sense, that article 25 of the LTC, expressly provides for the option of facilitating partial access to the requested documentation when it states that "if any of the established access limits to public information are applicable for the previous articles, the denial of access only affects the corresponding part of the documentation, and restricted access to the rest of the data has been authorized".

Thus, by way of example, since as has been said, the exact content of the proceedings is unknown, it seems foreseeable that it could be relevant to the intended purpose, for example, access to candidacies, but not to the identification of the members of the excluded candidates.

With regard to the act of proclamation of the chosen candidacy and haste of possession, there is no disadvantage in providing the merely identifying data (name and surname) of the composition of the new Governing Boards of the two previous electoral processes, given that this is data that, due to its very nature (Governing body of the College), must be known by all members. For the same reason, there would also be no problem in handing over the identification of the members of the Governing Boards that have ceased, but not the reasons for cessation.

With regard to voting by mail, the electoral regime provides that the voter sends the vote in a sealed envelope in the first, the name, surname and signature in a second and the DNI in a third (article 44 of the Statutes). In this case, in which the vote is secret, there would be no disadvantage in being given access to the minutes that reflect the scrutiny of the votes in general or in any case broken down the number of votes that have been cast by mail but, under no circumstances, can access be given to the identification data or the DNI of voters by mail. In fact, according to article 48 of the Statutes, the one who carries out the scrutiny is not the Board of Governors, but the electoral board. Therefore, this is information that should no longer be available to the Government Juta.

Beyond that, and in the absence of more concreteness in the request, the disclosure of more personal information that they may contain would not seem justified.

IV

Secondly, access is requested to the "date of registration in the corresponding Professional Colleges Register, of the composition of each of the new Government Boards."

Article 73.b) of Law 7/2006, deployed by the Order of October 31, 1983, which creates the Register of Professional Associations within the Department of Justice, and regulates the operation (DOGC no. 390 of December 16, 1983) modified by Order JUS/465/2005, of November 11, which approves the application of the management of procedures and documents of the registers that fall under the jurisdiction of the General Directorate of Law and Legal Entities of the Department of Justice (DOGC no. 4527 of December 12, 2005) provides that it is mandatory to register in the Register of Professional Associations "the people who make up the governing bodies and the successive renewals and modifications of the components of these bodies".

In this case, the registration date considered in isolation does not in itself provide personal information. Now, in relation to the act that is registered, specifically, the composition

of each of the new governing boards, does offer information and, therefore, must be considered as personal data.

Given that the purpose of the access is to control that the actions and organization of the College are democratic, this date could be relevant to verify compliance with the legal obligation to register the people who make up the governing boards for the purpose of being able to detect possible irregularities and to be able to know exactly the period covered by the mandate as a member of the Board. From this point of view, it would not be disproportionate to give access to this information.

v

Finally, add that it would be convenient to transfer the request for access to the candidates, as provided for in articles 31.1 and 42 of the LTC, either by the College, during the processing of the request for access, 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. For these purposes, the GAIP can use the data contained in the file to contact the affected persons or request the College to provide them with the data that can be used to contact them in contact

It is also worth remembering that, in accordance with the provisions of article 35.2 of Law 19/2014, "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."

Taking into account that the information subject to the claim contains personal data and that there is a legal limitation that must be dealt with by applying the criteria provided for in articles 23 and 24 of Law 19/2014, and that could mean a denial of access to the requested information, the right of access to the claimed information containing personal data cannot be understood as acquired by administrative silence.

In accordance with the considerations made so far in relation to the query raised, the following are made,

conclusion

The data protection regulations would not prevent access to the requested information, with respect to the members of the Governing Board who intervene in the exercise of their functions. On the other hand, with respect to the rest of the people affected, the data protection regulations do not prevent access to the names and surnames of the people who make up the accepted candidacies and those who have been chosen, as well as the date of registration in the Register of Professional Associations of the composition of each of the new Governing Boards, unless the hearing procedure granted results in some circumstance that prevents it.

On the other hand, and in the absence of greater concreteness, it would not be justified to give access to special categories of data that may be included, other incidents that may affect candidates or other data, such as personal data related to the exercise of voting by mail.

Barcelona, November 29, 2018