

Ref. IAI 1/2019

Claim: 293/2018

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 presented by a citizen against the City Council of (...) for the denial of access to information on the invoices justifying the expenses incurred by the municipal political groups in charge of the subsidies they receive from the corporation .

The Right of Access to Public Information Guarantee Commission (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on claim 293/2018 presented by a citizen against the City Council of (. ..) in relation to the denial of access to information on the invoices justifying the expenses incurred by the municipal political groups in charge of the subsidies they receive from the corporation.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and having seen the report of the Legal Counsel, the following report is issued:

Background

- 1. On July 2, 2018, a citizen submitted a letter to the City Council of (...) requesting: "The breakdown of expenses by year and justification with invoices included, of the destination of the money received by each of the political groups of the City Council of (...) of the current legislature from 2015 to 2018, grouped by political group and year".**
- 2. According to the file, the City Council would have communicated the request for access to information to the municipal groups and would have requested the required information.**
- 3. On July 25, 2018, the City Council notified the person requesting the resolution by which it agreed: "PARALLY APPROVE the request for the right of access to public information made by Mr (...), in so far as the applicant is provided with the documents formulated by the mentioned municipal groups relating to the breakdown of expenses by year and justification, and the part relating to the justification of expenses with invoices included is dismissed, (...)." The file contains a copy of the letters from the different municipal groups that would have been communicated to the applicant.**
- 4. On August 3, 2018, the interested party filed a complaint with the GAIP alleging that the City Council had provided the information partially. In this letter, the claimant states that he wants to access the requested public information -specifically, the invoices-, "dissociating the personal data as provided for in article 25 (of the LTC)".**

5. On August 9, 2018, the GAIP requested a report from the City Council in relation to the claim presented. The file contains a copy of the City Council Report of September 10, 2018, according to which the claim should be dismissed.

6. On November 6, 2018, the GAIP asks the City Council to notify the affected municipal groups of the request for access to information, in order to send the GAIP the considerations they deem appropriate. The file contains a copy of the pleadings submitted by the different municipal groups affected.

7. On January 14, 2019, the GAIP requests this Authority to issue a report 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 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 included in the requested information is outside the scope of this report.

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

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

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

According to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), personal data is: "all information about a identified or identifiable natural person ("the interested party"); 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 identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person; (art. 4.1 RGPD).

We note that the GDPR has been fully applicable since 25 May 2018 and is therefore the applicable data protection rule at the time the access request was made (2 July 2018). We note that Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), in force since December 7, 2018, is not applicable in the case at hand given the date on which the claim was made to the City Council.

Therefore, the processing of personal data (art. 4.2 RGPD) that may be contained in the information requested, specifically, in the invoices justifying the expenses incurred by the municipal groups, is subject to the principles and guarantees of the regulations of personal data protection (RGPD).

According to article 86 of the RGPD:

"The personal data of official documents in the possession of some 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 apply them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

Law 19/2014, of 29 December 2014, on transparency, access to information and good governance, aims to regulate and guarantee the transparency of public activity.

Article 18 of Law 19/2014 establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (section 1). The mentioned article 2.b) 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 the which are supplied by the other obliged subjects in accordance with the provisions of this law".

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 financial allocations received by the municipal political groups in charge of the municipal budgets is "public information", subject to the access regime provided for in the transparency legislation.

In any case, 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 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 Law 19/ 2014 which is invoked by the

For the purposes of this report, we note that, in the request for a report to this Authority, dated January 14, 2019, the GAIP states that the person making the claim is a journalist, and that this fact, and the fundamental right that assists him in his capacity as a journalist to obtain information in order to communicate truthful information, constitutes a weighting element that could change the conclusion reached by this Authority in Report IAI 46/2017, issued on request of the GAIP in relation to a case substantially comparable to that analyzed in this report, which can be consulted on the [website: www.apd.cat](http://www.apd.cat).

The GAIP states in the report request that "the information on the identity of the natural persons who, as professionals, benefit from the recruitment of political groups in charge of public subsidies offers undoubted interest for the journalistic investigation, as it could uncover cases of clientelism or nepotism (...)."

For this reason, the GAIP requests from this Authority a pronouncement on whether in this case, considering the status of a journalist and the interest of this information for the service of the purpose of investigation of the destination given to public funds by of the groups, access to the personal data of third parties that appear on the invoices would be justified or if, in the terms indicated in the IAI report 46/2017, it would be necessary to delete the personal data of the third physical persons that appear there.

III

According to article 73.3 of Law 7/1985, of April 2, regulating local regime bases (LRBRL):

"3. For the purposes of their corporate action, the members of the local corporations will form political groups, in the form and with the rights and obligations that are established with the exception of those who are not part of the political group that constitutes the electoral formation by those who were elected or who leave their group of origin, who will be considered non-affiliated members.

The Plenary of the corporation, in charge of its annual budgets, may assign to political groups an economic endowment that must have a fixed component, identical for all groups and another variable, depending on the number of members of each one of them, within the limits that, as the case may be, are established with a general character in the Laws of General Budgets of the State and without which they can be allocated to the payment of

personnel remuneration of any type in the service of the corporation or the acquisition of goods that may constitute fixed assets of a patrimonial nature.

The economic and political rights of non-affiliated members may not be superior to those that would have corresponded to them had they remained in the group of origin, and will be exercised in the manner determined by the organic regulations of each corporation.

This provision will not apply in the case of candidacies presented as an electoral coalition, when any of the political parties that make up it decide to abandon it.

The political groups must keep a specific accounting of the endowment referred to in the second paragraph of this section 3, which they will make available to the Plenary of the Corporation, whenever it requests it. (...)"

The LRBRL foresees that the Plenary of the corporation assigns to the political groups financial endowments that must contain a fixed component, identical for all groups and another variable, depending on the number of members of each of these groups, and within of the limits that may be established by the respective General Budget Laws of the State.

These endowments, the amount of which is to be determined by the Plenary, cannot be used for the payment of staff remuneration of any kind in the service of the Corporation, nor for the acquisition of goods that may constitute fixed assets of a patrimonial nature.

As the claimant himself points out (Legal Basis Fourth of the claim of August 3, 2018), his request does not refer to the fulfillment of active advertising obligations, but to a request for access to information public, as is the justification of the destination of the money received by each of the municipal groups.

As can be seen from the applicant's letter of claim, the municipal groups would have already provided information on the expenses incurred against the subsidies they receive from the City Council, with varying degrees of detail, as a result of the first request made, "without any of the 7 responses from the groups including invoices or any type of agreement with the respective parties to transfer funds or any other supporting documentation".

With regard to the information requested by the claimant, it must be taken into account that the minimum content of an invoice is that required by article 6 (invoices in general), and article 7 (in the case of simplified invoices) of Royal Decree 1619/2012, of November 30, which approves the Regulation regulating invoicing obligations.

Thus, the invoices will contain, at least, the data corresponding to the invoice number (art. 6.1.a); the date of issue (art.6.1.b); the name and surname, the name or full company name, both of the person obliged to issue the invoice and of the recipient of the operations (art. 6.1.c); the NIF (art. 6.1.d); the address of the obligee and the addressee (art.6.1.e), among others. In the simplified invoices, it is necessary to include, among others, the NIF, as well as the first and last name, name or full company name of the person obliged to issue them (art. 7.1.d) R. decree 1619/2012

From the outset, the information relating to legal entities that may appear in the invoices or supporting documents for the expenses of the municipal groups, will remain outside the scope of protection

granted by the regulations on the protection of personal data (art. 4.1 RGPD). Consequently, there would be no impediments, from the perspective of data protection, to give the person claiming access to this type of information relating to legal entities.

Taking into account the regulatory forecasts exposed, in principle it seems that the information that could be contained in the invoices would not, in principle, be data of special categories, deserving of special protection (art. 23 LTC and art. 9 RGPD).

Therefore, in order to give access to the same, it will be necessary to carry out, beforehand, a reasoned weighting of the public interest in the disclosure and the rights of the affected persons, taking into account, among others, the circumstances provided for in article 24.2 of the LTC, following:

"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. (...)."

At the outset, with regard to the personal data of councilors that may be included in the invoices or documents justifying the expenses of the municipal groups, it is necessary to reiterate the considerations already made in the IAI Report 46/2017 (FJ V):

"With regard to the information that may affect the councilors who are members of the group, if the information is given without providing the details of eventual representation expenses (meals, travel, accommodation made as part of the inherent activities of the political groups), the degree of interference with the privacy of the councilor would be much lower and would certainly respect the principle of data minimization. However, in the event that it is a question of expenses that are recorded as imputable to the activity of a certain councilor, the data protection regulations would not prevent access to this information. From the point of view of the councilor who may be affected, it must be taken into account that these people hold public positions, have and use, with a wide margin of discretion, public money that should be intended to cover expenses of functioning of the group of which they are part, and therefore linked to the public purpose they pursue. The need to control this margin of discretion in relation to the use of public funds can justify access to this information."

Having said that, it is necessary to refer below to the assumption that the invoices or documents justifying the expenses of the municipal groups include data of other natural persons, other than the councillors.

IV

Although in accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, the fact that the applicant expresses what is the purpose he is pursuing or the reasons for which he is interested know the information, constitutes a very important element to be taken into account as a weighting criterion between the public interest in the disclosure of the information

affected people

In the case at hand, it is necessary to take into account, at the outset, the status of journalist that, as can be seen from the available information, the person making the claim would have.

As the European Court of Human Rights (ECtHR) has repeatedly highlighted in relation to the right to freedom of expression, which includes the right to receive or communicate information and ideas (Article 10 of the European Convention on Human Rights), it is necessary to take into account the special position of journalists and the media - as well as other public information seekers, such as non-governmental organizations, researchers or activists - since they carry out an action, as "watchdogs", which contributes to the exercise of the right to give and receive information and, ultimately, to the public debate.

In this sense, we cite as an example, the SSTDH *Bladet Tromsø v. Norway* (May 20, 1999), *Rosianu v. Romania* (June 24, 2014), or *Magyar Helsinki Bizottság v. Hungary* (November 8, 2016), among many others.

Thus, it is sufficiently contrasted, taking into account the regulatory framework (art. 20.1.d) EC, and art. 10 CEDH), and the jurisprudence, that journalists -among other professionals and collectives- would have a prominent role in contributing to the formation of free public opinion.

Therefore, the journalist status of the person requesting access to public information can be an element to take into account - although not in isolation but together with other elements -, for the purposes of the weighting that must be carried out, for the purposes of article 24.4 LTC.

In any case, it does not seem that the mere status of a journalist who requests access to public information must necessarily lead to access to personal data of third parties, specifically, those that could contain the invoices requested, in less, without taking into account other weighting elements.

As stated in Legal Basis V of Report IAI 46/2017, the following must be taken into account:

"(...).

For the purposes of transparency, and in general, it may be relevant to know the information on what the destination is, that is, in what and what part of the public endowment has been intended to cover material costs, rent of premises, or to cover advertising campaigns or representation expenses, or any other operating expenses of each of the groups. Knowing the different concepts of expenditure and their amounts would allow the citizen to verify that the endowments are allocated to operating expenses and not to other things, and to what extent they are carried out. With this, in principle the citizen could check the correct use of the public funds allocated to the groups and form a critical opinion on the various ways of proceeding from the different groups.

From the point of view of the third physical persons who may eventually be identified in the accounting documentation or in the respective invoices justifying the purchases or services paid for by the political groups, in principle, and in the absence of a greater

concreteness on the reasons for which access is of interest, it must be taken into account that in principle it seems that this would be information linked to some professional activity (either as a result of facilitating supplies or the provision of services) so the intrusion into the private lives of these people would be minimal, but it cannot be ruled out that a continued relationship may end up allowing the identification of some type of link with certain people or suppliers which, taking into account the political nature of the municipal group, may end up allowing the establishment of , justified or not, some kind of political affinity.

On the other hand, it may seem like a case analogous to the exposure to which the administration's contractors are subjected, who, by mandate of the LTC are subject to a demanding regime of active advertising (art. 13 LTC), but it is necessary keep in mind that in this case it is not about controlling these third parties, but about controlling the destination of the funds. This being so, the goal of transparency would also be achieved without the need to identify and sacrifice the privacy of natural persons who may eventually appear in the set of affected documentation. By application of the principles of proportionality or minimization in the processing of data, it is considered that the eventual access to the requested documentation should not include information that allows them to be identified. It is worth remembering that anonymization should always be the first measure to take into account in the event of access to personal information affected by the exercise of citizens' right of access. It would be sufficient to provide information about the concepts.

(...).”

In this context, and beyond the status of a journalist who claims the information, it is necessary to take into account the concreteness of the reason or the justification that, if applicable, the claimant of the information can make.

In the letter accompanying the claim submitted to the GAIP, dated August 3, 2018 (Third Fact), the claimant states that the municipal groups following the first request for information, "give access to various levels of information". In this section, the claimant states that some municipal groups would have provided more complete information than others, although, according to the information available, none of the groups would have provided invoices for the expenses incurred.

Beyond that, according to the letter of August 3, 2018, the claimant requests "access to public information (...) such as the justification of the destination of the money received by each of the political groups", there is no there is greater concreteness on the part of the claimant regarding the reasons for the access, which allows to discern whether it might be necessary in some case to know the identity of certain natural persons whose identity may appear on some invoices of one or more municipal groups.

Given the information available, it is not known whether, following the first referral of information to the complaining journalist, by the municipal groups, it has been possible to detect any issue (in relation to the provisions of article 37.3 of the LRBRL), that requires knowing the identity of specific natural persons in relation to invoices from one or more municipal groups. If this were the case, we cannot rule out that, in certain cases, access to information on invoices must include personal data. However, the information available, and the terms in which the claimant formulates the request, do not allow access to identifying data to be considered justified

of all the people listed on the invoices, in relation to the set of invoices from the different municipal groups.

If we adhere to the provisions of article 37.3 of the LRBRL, it would be to control the destination of the funds received by political groups and not - at least not in all cases or in general - to control third parties physical that may appear on invoices.

Specifically, the object of the control consists in ensuring that these funds are not used for the "payment of personnel remuneration of any kind in the service of the Corporation, nor for the acquisition of assets that may constitute fixed assets of a patrimonial nature", in the terms of article 73.3 of the LRBRL, cited.

Taking this into account, in the event that the natural persons who appear on the invoices or documents justifying the expenses are working people in the service of the corporation, knowing their identity could be necessary for the purposes of controlling the destination of the funds that they receive the political groups, in the terms of article 73.3 LRBRL. In this case, the data protection regulations would not be an impediment to giving access to the person claiming the invoice or supporting documentation, including the identity of the third natural person.

Aside from this assumption, taking into account the purpose of the control according to article 37.3 of the LRBRL in the terms indicated, it does not seem that the purpose of the access and the terms in which the request is specified can be sufficient, given the information available, to consider justified the access to the personal data of the rest of the third physical persons that may appear on the invoices, in broad terms and in relation to the set of invoices of the municipal groups affected

v

Having said that, it is necessary to reiterate the considerations already noted in the IAI Report 46/2017, in the sense that it cannot be ruled out that the contribution of invoices by municipal groups, in terms that do not allow the identification of specific natural persons, may contribute to supplementing the information already available to the claimant, and that the municipal groups would have previously provided him.

Facilitating access to public information (invoices) prior to dissociation of the personal data contained therein, so that it is not possible to identify the persons affected either directly or indirectly (Article 5.1.e) RLOPD), is fact, an option expressly provided for in the transparency regulations.

Thus, article 15 of Law 19/2013 establishes that:

"4. What is established in the previous sections will not be applicable if access is effected prior to the dissociation of personal data in a way that prevents the identification of the affected persons."

In fact, as this Authority already stated in Report IAI 46/2017, it can be understood that, in the resolution of access requests, this option - the prior dissociation of personal data or anonymization - should be the general rule, as long as the personal data were not relevant to satisfy the public or private interest that motivates access to the information in question. Relevancy that, based on the available information, would not necessarily be relevant solely because of the claimant's status as a journalist.

There is, yet another weighting element that should be taken into account in the case presented.

The fact that, in the present case, the applicant expressly states, in the letter dated August 3, 2018, that he wants to access the requested public information -specifically, the invoices-, "dissociating personal data as provided for in article 25 (of the LTC)", seems to show that what is intended with access to this public information is to be able to contrast, with greater concreteness, the information that the groups would have already provided municipalities at first.

The fact that, given the information available, the claimant himself requests information on the supporting invoices for the expenses of the municipal groups in a dissociated form, allows us to infer that, at the discretion of the applicant himself, the information provided in these terms, together with the information you already have (and that the municipal groups would have provided you previously), it would allow you to respond to the request, with the communication of a minimum of personal data, in accordance with the principle of minimization.

In any case, it must be borne in mind that in order for the anonymization (the dissociation referred to by the applicant) to be considered sufficient for the purposes of data protection legislation, it is necessary to ensure that the information provided is not related to an identified or identifiable natural person.

To determine if a natural person is identifiable "must be taken into account all the means, such as singularization, that can reasonably be used by the person responsible for the treatment or any other person to directly or indirectly identify the natural person. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment as technological advances" (consideration 26 RGPD).

Therefore, in the event that there was a real risk of re-identifying the affected persons without disproportionate efforts, access to the requested public information would have to be denied.

In any case, to be able to adequately assess the risk of re-identification (in relation to certain natural persons who may appear on the requested invoices), and also in the event that, where appropriate, the affected persons (the natural persons identified in the invoices) can consent to access to the information without dissociation, if they so wish, it would be necessary to carry out the procedure of hearing the affected persons provided for in article 31 of the LTC.

conclusion

The data protection regulations do not prevent the claimant's access to the invoices prior to their dissociation, as requested by the applicant, as long as it is guaranteed that the affected persons cannot be identified directly or indirectly without disproportionate efforts .

Beyond this, given the information available, from the perspective of data protection (principle of minimization) general access to the personal data of third parties does not seem justified, in the case raised physical persons other than the councilors or working people in the service of the corporation, that appear on the invoices, for the purposes of controlling the destination of the funds received by the political groups.

Barcelona, February 13, 2019

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