

Ref. : IAI 4/2019

**Claim: 519/2018**

**Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim submitted by a citizen against a City Council for the denial of access to information on inspections opened in one of its districts between 2007 and 2018.**

**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 519/2018 presented by a citizen against a City Council for the denial of 'access to information on the inspections opened in one of its districts during the years 2017 and 2018.**

**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 October 30, 2018, a citizen presented an instance to a City Council in which she requested information on all inspections opened in the District (...) between the years 2007 and 2018 with an indication of the location, the scope of the infraction, the regulations that cover it, the reason (complaint, control plan...), the penalty imposed and how the file ended, the instructor of the same, the amount of money collected by inspections and appeals filed.**
- 2. On November 12, 2018, the City Council requests the interested party to provide and specify the requested information, understanding that it is too generic.**
- 3. On November 21, 2018, the interested party submits a new letter in which the initial request is fully ratified.**
- 3. On January 17, 2018, the City Council issued a resolution partially approving the request. Specifically, access to the location is denied considering that the limitations provided for in article 23 of the LTC, and access to information on what the penalty was imposed and how the file ended, as well as information on the amount of money collected.**
- 5. On December 30, 2018, the interested person submitted a claim to the GAIP, for the partial denial of the requested information.**

**Specifically, according to the claim form, it claims that the requested information is not clearly identified. It has not been clearly specified the reason for the inspection, nor how the file ended, nor who was the person conducting the investigation. He also considers that the information with the geographical location provided is not sufficient, he points out that he would need to have the locations beyond the areas referenced on the map.**

6. On January 30, 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 government, 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, as would be the case with the limit established in article 21. b) of Law 19/2014, of December 29, on transparency, access to public information and good governance.

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

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".

The information related to the inspections carried out in one of its districts during the last 11 years is public for the purposes of article 2.b) of the LTC and, therefore, remains subject to the right of access (art. 18 of the LTC). This right, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to the protection of personal data, it is necessary to assess the personal data that would be affected by the access and determine whether or not the right to data protection of the affected persons can justify a limitation, of in accordance with the criteria set out in articles 23 and 24 of the LTC and the regulatory principles of the personal data protection regulations.

### III

The purpose of the request is to access information on inspections and sanctioning files opened in a certain district of the city for more than 10 years (between 2007 and 2018). In particular, the following detailed information is requested:

- the location.
- the scope of the offense and the regulations that cover it.
- the reason for which the action was taken (complaint, control plan or other).
- the penalty imposed and how the case ended.
- the instructor of the file.
- the amount of money collected by the inspections and the appeals filed

Taking into account the terms in which the request is made, access would affect the information on the inspections carried out and on the sanctioning files that have been processed as a result of the possible infringements detected as a result of these inspections.

According to the documentation provided by the City Council, the reasons that would have justified their action are very diverse and are related to the different areas of municipal competence. Most of the actions taken comply with alleged violations under Law 20/2009, of December 4, on the prevention and control of activities, Law 16/2002 of June 28 on protection against noise pollution, Legislative Decree 1/2010, of August 3, which approves the revised text of the Urbanism Law, Law 11/2009, of July 6, on the administrative regulation of public shows, or Law 18/ 2007, of December 28, on the right to housing. Thus, in the list corresponding to the "File Count, Row Labels" of the document that appears in the file, for example, nuisance due to noise in public participation activities or in facilities, works without permission of works, or renting rooms.

**Article 23 of the LTC establishes that requests for access to public information must be denied if the information sought contains "specially protected personal data, such as those relating to ideology, affiliation trade union membership, 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 I expressly consent to it in writing that must accompany the request."**

**In this same sense, article 15.1 of law 13/2013 establishes:**

**"...If the information includes specially protected data referred to in section 3 of article 7 of Organic Law 15/1999, of December 13, or data relating to the commission of criminal or administrative offenses that did not entail the public admonition to the offender, access may only be authorized if the express consent of the affected person is counted or if he or she is covered by a law. "**

**Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), extends its scope of protection to personal data understood as all information about an identified or identifiable natural person, and considers an identifiable natural person "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, como por ejemplo a number, an identification number , location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person; " (Article 4.1 of the RGPD).**

**Therefore, the data of legal entities are excluded from this scope of protection, as specified by the RGPD itself, by establishing that "The protection granted by the present Regulation must be applied to natural persons, regardless of their nationality or your place of residence, in relation to the processing of your personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details. (Recital 14).**

**Consequently, the limit of article 23 of the LTC or 15 of Law 19/2013 does not apply in cases where the owners of the premises or establishments about which information is requested are legal entities to the extent that legal entities are not holders of the right to the protection of personal data, and in this sense there can be no impediment to deliver the requested information to the claimant.**

**Starting from this initial premise, and in the opposite sense, this limitation would be applicable in the event that the information provided allows the identification of the natural person affected directly or indirectly, including the individual entrepreneurs and liberal professionals who own the establishments or premises inspected and / or sanctioned.**

**Regarding the commission of criminal or administrative offenses by individual entrepreneurs, and in line with the criterion supported by the Authority in previous reports (among others, IAI 27/2016 and IAI 8/2018 and IAI 33/2016), it is considered that although it is true that the information related to**

infractions committed as part of the professional or commercial activity that is carried out must in principle affect the commercial and economic interests of the holder which should remain within their business sphere, disclosing this type of information can also have harmful effects that go beyond the strictly business sphere. Thus, reporting on the alleged infractions committed by these people or on the sanctions imposed may affect not only their personal patrimonial sphere, (in the event that they come to be sanctioned), but may even affect their prestige or their social image - remember that the offender is the entrepreneur or owner of the business regardless of the commercial name that the establishment may use -, for some facts for which responsibility is attributed to him even before he has been sanctioned administrative or judicial, in the event that the procedure has not ended.

Neither article 23 of the LTC nor article 15.1 of Law 19/2013 establish any type of distinction in relation to the limitations of access to information relating to the commission of criminal or administrative offenses by natural persons and this means that the privacy expectations of individual entrepreneurs or liberal professionals regarding the possibility of third party access to this information are exactly the same as those that individuals may have.

Having said that, it should be noted that in the analyzed case the names of the owners of the premises or homes inspected and/or sanctioned are not requested (information that would allow the direct identification of those affected), and therefore the information requested can only affect the right to the protection of personal data to the extent that the information related to access allows these people to be identified indirectly, assuming that the access limitations provided for in the transparency regulations would be applicable.

As stated in recital 26 of the RGD, "To determine whether a natural person is identifiable, all means, such as singularization, that can reasonably be used by the person responsible for the treatment or any other person to identify directly or indirectly to 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 like technological advances."

In these respects, from the detail of information requested regarding the inspections and violations committed, the information referring to the location, location or address of the place where these violations have been detected could make it possible to identify the persons responsible. In fact, this is the reason why the City Council understands that it is necessary to limit access

It is worth pointing out that the inspection actions where violations have been detected can be premises or establishments where commercial or professional activities are carried out, but they could also be homes and in some cases coincide with private homes. The address or location constitutes location data and it cannot be ruled out that, through this data, the owners of the premises or flats filed and/or sanctioned can be identified without making disproportionate efforts.

This same argument must be extended with respect to the information on the inspections carried out where allegedly irregular conduct has been detected even if they have not resulted in a disciplinary action. The fact that at the time of raising the minutes

of inspection has not yet declared the commission of any infringement and that the procedure to sanction them has not even started, does not prevent the application of the limit provided for in article 23 LTC. To note at this point, that article 23 of the LTC does not refer to the need for a penalty to have been imposed, or even for the commission of an offense to have been formally and definitively declared, but which refers to "specially protected personal data, such as (...), and also those relating to the commission of criminal or administrative offences.". And it is clear that the information contained in the inspection reports where a non-compliance is found, is information related to the commission of the infringement.

As indicated by the City Council in its report, since 2007 26,885 inspections have been carried out in the district, with which indiscriminate access to all the addresses of the premises or homes processed could end up causing the identification of a large number of people, with the aggravating fact that the current owners of these premises or homes may not be the people filed years ago.

Once it has been determined that it is impossible to provide the address or specific location of the premises or homes where the actions took place, it is necessary to assess the possibility of providing the claimant with some type of information that allows these actions to be limited within the district as proposed by the City Council in its resolution.

#### IV

The resolution of the City Council offers the claimant the possibility of providing the data by area. According to the documents contained in the file, the City Council would have given the claimant lists in which the scope of action, matter or irregular conduct on which the actions of the administration are based are identified with the number of inspections or files opened each year for these matters, and the Law applicable to each one. These lists are accompanied by a map of the district divided into several inspection zones identified with numerical codes.

Despite this, the lists with the information on the number of open files broken down by subjects and years contained in the file provided to this Authority do not distinguish the information by inspection areas.

The claimant considers when making the claim that the information provided is partial and does not correspond to the information requested. In this sense, he alleges that "the reason for the inspection has not been specified with clarity and specification of what the provenance values mean"; that "it has not been specified how the file ended (proposed resolution, closure...)". He also points out that the geographic information provided is not sufficient and that he should have more details about the location, without specifying, however, what degree of detail he needs and without explaining the reasons why he needs this greater detail.

The information initially provided by the City Council would allow the claimant to know which irregular behaviors have been detected and/or sanctioned and to evaluate the management of the municipal administration within the same district both in terms of its control tasks and in terms of in the exercise of the sanctioning power, and there is no doubt that it is information that may be relevant for the purposes of achieving the purpose of transparency in terms of article 1.2 of the

But this does not seem to be the purpose pursued by the claimant, taking into account the interest shown in the claim in obtaining detailed information about the location.

Certainly, the information about the location where irregular behavior has been detected would allow the claimant to assess whether there is any specific area of the district where the control action by the administration could have been more intense than in other areas, in relation to with what type of infringements, if the action plans have been directed to specific areas or others, or which is the area where more or fewer complaints have been made.

This assessment could be done, however, in part, if the information requested regarding each of the various inspection areas that appear delimited and coded on the district map were facilitated, as proposed by the City Council in the resolution of the access request.

Warn, however, that the delivery of the information in the terms proposed by the City Council would only comply with data protection regulations to the extent that access to information about the specific inspection area delimited on the map together with with the rest of the information on the different areas of action that is provided does not allow the identification of the natural persons responsible.

Note that the district is divided, according to the above-mentioned map, into 37 inspection zones, which makes the different zones relatively small. This element must be linked, as noted, with the rest of the information requested.

Thus, to give a specific example, in the list of matters, areas of action or irregular conduct that would have motivated the different files, 2 open files appear (one in 2012 and another in 2013) in relation to "Establishments for the sale of animals under sanitary conditions" (code 1405) establishments of this type in the specific inspection area where the actions were carried out, but if there was only one, it is clear that the information on the specific inspection area would allow easily identify its owner. If this holder were a natural person (legal persons are not holders of the right to data protection), the limitation of article 23 of the LTC would be imposed, and therefore, it could not be facilitated in this specific case said information.

Ultimately, it is up to the City Council, which knows all the details, to determine whether obtaining the information about the specific inspection area where the actions related to the rest of the details requested (scope of the infringement, the reason for the action, or the state of the sanctioning file) would enable the identification of natural persons responsible, and in these cases it will be necessary to limit their access.

In the event that this is the case, the information could be aggregated, either by delimiting larger geographical areas, or by aggregating the information that allows the type of file to be identified, so that the physical persons affected are not identifiable.

All in all, it is concluded that although the data protection regulations do not prevent access to the information requested regarding the legal persons inspected or sanctioned, article 23 of the LTC limits access to information about the location or address of the premises or homes inspected and/or sanctioned that allows to identify, even if indirectly, the natural persons (including sole proprietors who own the premises processed) that in

are liable, except in cases where the applicable material law provides for the public reprimand of the offender, or unless these persons expressly consent by means of a written document that must accompany the request, or when a rule with the rank of law has expressly provided for its publication (art.15.1 LT).

v

With regard to the information on the people who have acted as instructors in the respective sanctioning files, it should be borne in mind that this is merely identifying data related to the organization, operation or public activity of the administration, and in accordance with article 24.1 of the LTC, access must be granted, unless exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

Therefore, unless there is a personal circumstance of the instructing person that can justify a limitation of access, it will be necessary to provide the complainant with the name and position of the public employees in charge of instructing the sanctioning procedures.

#### CONCLUSION

The data protection regulations would not prevent the claimant's access to the information requested about the inspections and disciplinary proceedings carried out in the district, except for the information about the location or address of the premises or homes where the inspections have been carried out actions, or other information that makes it possible to identify by indirect means the natural persons holding them (including individual entrepreneurs).

The data protection regulations also do not prevent access to the identification data (name, surname and position) of the people who have intervened as instructors in the sanctioning files processed.

Barcelona, February 20, 2019