

Ref. AJ: IAI 12/2019

Claim: 514/2018

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 a University for the denial of access to information about the research projects and publications of individuals or research groups where Ms. (...) appears as the main researcher.

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 claim 514/2018 presented by a citizen against a University in relation to the denial of access to information on research projects and publications of individuals or research groups where Ms. (...) appears as the main researcher.

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 October 9, 2018, a citizen submitted a letter to the University requesting:

"1. The list of each and every one of the research projects and publications of individuals or research groups where Ms. (...) appears as the main researcher.

2. The full follow-up reports of each and every research project and publication of individuals or research groups where Ms. (...) appears as the main researcher and that the University (...) has in its power

3. The justification of full expenses and facsimiles of the original of each and every one of the research projects and publications of individuals or research groups where Ms. (...) appears as the main researcher and that the University (...) available, with their corresponding invoices."

2. According to the file, the University would have notified the affected person of the request for access to information, pursuant to article 31 of Law 19/2014, of December 29, on transparency, access to public information and good governance.

3. The file contains a copy of the letter of allegations that the affected person would have submitted to the University on October 25, 2018, where he states that he is not currently the principal investigator of any research project funded by no public institution and which only directs a research group. The affected person declares that he does not authorize the transfer of the information that would have been requested without any motivation, since he considers that it does not comply with the Transparency Law and that, in any case, the consent of the affected persons would be necessary .

4. On December 24, 2018, the interested person filed a complaint with the GAIP alleging that the University did not provide him with the requested information. In this letter, the claimant refers to Resolution 259/2018, of September 21, of the GAIP, which considers the Claim

252/2018 and declares the claimant's right to access certain information, requested from the University itself, and which substantially coincides with the information subject to the claim that is analyzed in this report.

5. On January 10, 2019, the University informs the applicant that "(...) having reviewed the archives of this University, at present (...) he is not listed as the main researcher of no research project or publications and, therefore, (...), your request does not fall under any of the conditions provided for in this Law."

6. On January 28, 2019, the claimant addresses the GAIP and requests that clarification be requested from the University regarding the apparent contradiction between the information received and that available on the University's website, according to which the affected person is listed as the main researcher in several projects and publications.

7. On March 6, 2019, the University sent the requested report to the GAIP, according to which it considers it appropriate to deny access to the requested documentation given that "once the files of this University, it was found that at present (...) she is not listed as the main researcher of any research project or publications (...)." In the same letter, the University informs the GAIP that an information file has been initiated in order to find out the actions of the affected person in relation to different recruitments carried out by the University at its request.

8. On March 8, 2019, the GAIP requests this Authority to issue a report in relation to the claim submitted.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, on the Catalan Data Protection Authority, the Catalan Data Protection Authority is the independent body whose purpose is to guarantee, within the scope 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 this 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 affected persons, understood as "all information about an 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, will be considered an identifiable natural person

specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of said person; (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)).

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

We note that the GDPR has been fully applicable since May 25, 2018 and is therefore the applicable data protection rule at the time the access request was made (October 9 2018). 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 said request was made.

Therefore, the processing of personal data (art. 4.2 RGPD) that may be contained in the information requested, specifically, in relation to research projects and publications, the corresponding monitoring reports, and the justification of expenses of the projects -including the invoices justifying the expenses-, and facsimiles of the original of the projects, is subject to the principles and guarantees of the regulations for the protection of personal

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 (LTC), aims to regulate and guarantee the transparency of public activity.

Article 18.1 of the LTC 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 person

legally constituted legal entity". 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, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information)).

The information related to research projects and publications that are carried out at the Universities is "public information", given the terms of article 2.b) of the LTC, and is subject to the access regime provided for in the transparency legislation.

Section 4 of the statement of objections of October 25, 2018, of the affected person (the teacher in relation to whom the information is requested), states that, taking into account that the LTC entered into force six months after its publication in the DOGC (final provision 4ª LTC), "it may only be subject to delivery, in its case, documentation after June 30, 2015."

Regarding this matter, it should be noted, at the outset, that the LT, which provides for the right of access to public information (arts. 12 and 13), entered into force on December 10, 2014 (ninth final provision LT). Therefore, it must be understood that from that date any citizen would have been able to exercise the right of access to public information, in this case, from a public University.

Beyond this, it should be noted that, from the moment that transparency legislation enables the exercise of the right of access to public information, this right can be exercised by any citizen with respect to any public information (art. 2.b) LTC), regardless of whether this information was prepared before or after the entry into force of said legislation.

Thus, the transparency legislation does not limit or exclude said access based solely on the fact that the requested public information has been prepared prior to the entry into force of the LT and the LTC.

A different issue is that, in certain cases, the date of preparation of the requested documentation must be taken into account as a weighting element (art. 24.2 LTC) and that, where appropriate, it may be relevant to deny the access taking into account the age of this documentation.

III

In accordance with article 20 et seq. of the LTC, 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 which the applicant invokes.

From the information that is available, it seems that the information requested about research projects and university publications would not, in principle, be data of special categories, deserving of special protection (art. 23 LTC and art. 9 GDPR).

Therefore, in order to grant access to the requested information, 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 foreseen in the 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. (...)."

Therefore, it will be necessary to examine whether the weighting required by article 24.2 of the LTC enables access to the data of the affected persons, without the consent of the affected persons being necessary.

In this regulatory context we refer first of all to the request for access to:

"1. The list of each and every one of the research projects and publications of individuals or research groups where Ms. (...) appears as the main researcher."

As stated by the affected person in his statement of objections dated October 25, 2018, in application of the RGPD, "only data may be transferred to third parties whose owners have expressly given their informed consent to do - it is therefore necessary to ensure that if the documents that, in their case, must be provided, from June 30, 2015, affect third parties, their express and informed consent is obtained in order to transfer the bear. (...)."

According to article 6.1 of the RGPD:

"1. The treatment will only be lawful if at least one of the following conditions is met:

a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures; c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment; (...) e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment; (...)."

The legal basis for the legitimacy of data processing does not necessarily, or in all cases, be the consent of the affected persons.

We note that based on the transparency regulations, which are applicable to public universities (art. 2.1.d) LT and art. 3.1.c) LTC), these must comply with the requirements of the transparency legislation regarding active advertising (arts. 2.i) and 5.1 LTC). Thus, the Universities must provide certain information in relation, among others, to the organization

institutional and administrative structure (art. 9 LTC), or with economic, accounting, budgetary and patrimonial management (art. 11 LTC).

As this Authority agreed in Opinion CNS 53/2018, on the processing of researcher data in the Catalan Research Portal, which can be consulted on the website: www.apd.cat, as provided in article 31 of Organic Law 6/2001, of December 21, on Universities (LOU):

"1. The promotion and guarantee of the quality of Spanish Universities, at the national and international level, is an essential goal of university policy and has the following objectives: a) The measurement of the performance of the public service of higher university education and the surrender of accounts to society. b) The transparency, comparison, cooperation and competitiveness of Universities in the national and international sphere. c) The improvement of teaching and research activity and the management of Universities. (...)

2. The objectives indicated in the previous section will be fulfilled by establishing common quality assurance criteria that facilitate the evaluation, certification and accreditation of: (...) c) The teaching, research and management activities of the university faculty.

(...)."'

In the same sense, Law 1/2003, of February 19, on universities in Catalonia, provides that the universities integrated in the university system of Catalonia (art. 2 Law 1/2003) have as fundamental objectives, among d others, "the creation, transmission and dissemination of culture and scientific, humanistic, technical and professional knowledge (...)." (art. 3.1.a) Law 1/2003

Likewise, the LOU provides that research is a right and a duty of research staff (art. 40.1 LOU), and that the transfer of knowledge is a function of universities (art. 41.3 LOU).

According to section 4 of the additional provision 21^a of the Organic Law 4/2007, of April 12, which modifies the LOU: "Igualmente no será preciso the consent of the personnel of the universities for the publication of the results of the processes evaluation of your teaching, research and management activity carried out by the university or by public evaluation agencies or institutions."

Also, the sectoral regulations provide for open access dissemination of research staff publications, in the terms of article 37 of Law 14/2011, of June 1, on science, technology and innovation , to which we refer.

In view of the applicable sectoral regulations, which must be interpreted in connection with the transparency legislation, the legal authorization of Universities to disseminate certain information on the evaluation of teaching and research activity seems clear. in terms of activ Thus, among others, the Universities will have to provide certain information about their teaching and research staff, about the research and investigation projects carried out in their field of action, about their organizational structure, etc., in the terms provided by the

regulations studied, dissemination that may include certain personal data and that, for the purposes of interest, may have sufficient authorization, for the purposes of article 6.1 of the RGPD, without the consent of the affected persons being necessary.

Having said that, in relation to the exercise of the right of access to public information (art. 18 et seq. LTC) which concerns us, the applicable regulations may also enable the communication of certain personal data without the consent of those affected.

From the perspective of data protection, it must be taken into account that a list of research projects and publications related to a certain teacher is information that will not contain data deserving of special protection (art. 23 LTC).

Bearing this in mind, for the purposes of the weighting required (art. 24.2 LTC), and bearing in mind that the University itself must provide information on the teaching and research work carried out there (active advertising), it seems clear that providing a list of research projects and publications related to a certain teacher or researcher from the University, who is listed as the main researcher, means communicating information that is directly related to the teaching and research work of public universities which is not disproportionate.

For all that has been said, it must be concluded that the data protection regulations would not prevent providing a list of the research projects and publications that have been carried out at the University, with identification of the people who participated in them, in particular, with identification of the teacher listed as the main researcher, in the terms requested by the claimant.

IV

The claimant also requests access to the following information:

"2. The full follow-up reports of each and every research project and publication of individuals or research groups where Ms. (...) appears as the main researcher and which the University (...) has in its possession.

"3. The justification of full expenses and facsimiles of the original of each and every research project and publication of individuals or research groups where Mrs. (...) appears as the main researcher and that the University (...) available, with their corresponding invoices."

The request dated October 9, 2019, does not specify what is to be understood by "monitoring reports" of the projects in question. However, the same request refers to the Consolidated Research Groups and explains that the Group, made up of members of the university staff, "acts as part of the public sector when it contracts goods and services, when it pays for them, when it receives subsidies and , in general, in all its economic management. Also when he hires his staff and organizes the staff he has."

Likewise, the claimant mentions the University's regulations on research (...), referring to the criteria for creating research groups, according to which: "(...) The functions of

management and as well as any economic and contractual action will be exercised from the structure to which the main researcher of the aid, project, contract or specific agreement belongs.

According to the University Regulations, cited above, the Research Group is a research unit made up of members of the academic staff who share scientific objectives and are coordinated by a responsible researcher, and is considered the minimum structure in which it is organized research at the University.

The claimant's letter explains that "the full follow-up reports drawn up by the Research Group for each research project, as well as the full justification of the expenses delivered to the University as well as the set of invoices that open can be considered public information in possession of the University."

For the purposes of interest, from the information available, it can be deduced that said follow-up reports could contain information about the work plan of the project and the purpose of the study, about the teaching and research staff who are part of it, about the execution of the research project -including budget execution-, on the financial management of the project, and the results obtained (such as publications), etc.

Having said that, as already stated in Report IAI 34/2018 (FJ III), issued at the behest of the GAIP in relation to a request for access to information substantially coinciding with the one at hand, the documentation economic justification, in this case, of research projects, can be of different nature. Thus, the documentation relating to a research project could include information on the recruitment of personnel and the procurement of goods and services (either material for the realization of the project, advice, organization of conferences, publications, travel and accommodation expenses , etc.), among others.

At the outset, we note that in these reports there will be information not referring to natural persons, in respect of which the data protection regulations would not be an impediment to its communication to the claimant. As this Authority has done in the past, the information relating to legal entities that may be contained in the information requested about research projects and publications in the university field, remains outside the scope of protection granted by the regulations on the subject of personal data protection (art. 4.1 RGPD). Consequently, there would be no impediment, from the perspective of data protection, to give access to the person claiming to this type of information relating to legal entities that may be included in the documentation justifying expenses and invoices relating to research projects and publications referred to by the claimant.

We note that the claimant requests that "if necessary, (the University) anonymize the personal data of the information requested in points 1, 2 and 3 that it may contain, as long as this information is not merely identifying data of people who have have been contracted or recipients of contracts, allowances or services, under the terms set out in resolution 259/2018, of December 21."

It should be clarified that, in terms of the regulations on transparency (art. 15 LT) and protection of personal data (consideration 26 RGPD), the anonymization of personal information must allow it to not be possible to identify the persons affected either directly nor indirect

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 order for the anonymization or dissociation to be considered as such 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 (consideration 26 RGD).

The claimant's request (in the sense of keeping the identifying data and deleting others), would not be for the purposes of the studied regulations an "anonymization" of the information, but simply a deletion, before giving access, of certain personal data that the principle of minimization may make it convenient to delete from the documentation, in the terms indicated.

In any case, it is appropriate to reiterate the need to carry out the hearing procedure for all affected persons provided for in article 31 of the LTC.

Given these considerations, it also seems clear that the requested follow-up reports and the information on justification of project expenses will contain personal data, either from the researchers and teachers who have participated in the project, or from external suppliers.

v

For the purposes of the weighting of Article 24.2 LTC, it does not appear that the data protection regulations should be a limitation for the claimant's access to the merely identifying or curricular information of university teachers and researchers participating in a project research of a research group (or in projects of other "basic research units", eg art. 6 et seq. of the University Regulations, such as departments or university research institutes). Moreover, taking into account that, in the terms set out in this report and in CNS Opinion 53/2018, the applicable sectoral regulations require Universities to comply with the principle of transparency in the context of active advertising, in line with the forecasts of the transparency legislation on active advertising.

With regard to the requested information, related to the expenses of the research projects, specifically, the invoices related to the expenses generated by a research project, it should be taken into account that the minimum content of an invoice is 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 Regulations governing the obligations billing

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

it is necessary to include, among others, the NIF, as well as the first and last name, company name or full name of the person obliged to issue it (art. 7.1.d) R. decree 1619/2012).

This Authority has already pronounced on the issue in Report IAI 34/2018 (FJ IV), from the perspective of the necessary weighting (art. 24.2 LTC), in the following terms:

"The invoices are the documents that, once completed by the administration, justify the payment by it to the contractor. It constitutes, in short, information directly related to the management of public expenditure.

For the purposes of transparency, there does not seem to be any doubt about the relevance it can have for citizens, to have the information that allows them to know what the universities are spending the resources for research on.

Access to the identity of the awardees is already provided for in the transparency legislation as an active advertising obligation (art. 13.1.d), as well as the object of the contract and the award price, data that, in fact, in principle, are the basic data that would appear in the invoices corresponding to the justifications for the acquisitions of goods and services by the University's Research Group. Thus, access to the corresponding invoices would not imply a greater interference in the privacy of those affected.

We reach the same conclusion in the event that the tender aims to hire an external researcher or expert in the field to carry out specific conferences or studies. In this case, in addition to the active advertising obligations of article 13.1.d) of the LTC, knowing the identity of the hired persons allows an assessment to be made of their suitability for carrying out the assigned tasks. It must be taken into account that in most cases the people who are hired will be people of recognized prestige in the field and, most likely, in the case of conferences or publications, the identity of the expert or researcher has already been the subject of publicity prior, which reinforces the criterion of less interference in the privacy of those affected.

Beyond the information relating to the successful tenderer, the invoices must contain information on the subject of the contract. The description of the object may refer to information from third parties other than the successful tenderer, such as the researchers participating in the projects, for hotel accommodation or travel expenses, plane tickets, etc.

In which the person carrying out this activity is recorded.

In this case, it is necessary to consider the need to access this information in such a way as to allow the use of public funds to be evaluated, without unjustifiably sacrificing the right to data protection of these affected persons. Some information may be unnecessary, but the general description of the expense imputation concept and the identity of the beneficiary persons can help determine that the expenses of the researchers assigned to the project and not others are being imputed. On the other hand, the data of the main researcher is data that has probably already been made public when the project is approved. Therefore, once again the criterion must be to give access to the identity of these people since their knowledge is a decisive element to allow this control of the destination of public resources in research projects. (...)"

It must be reiterated that the LTC can enable access by the claimant to the invoices corresponding to the justification of expenses of research projects and publications in the terms requested, communication that, from the perspective of data protection (art. 6.1 RGPD), can be considered lawful.

For all the above, the data protection regulations would not prevent the person making the claim from communicating the project monitoring reports and the justification of expenses, including the requested invoices, with identification of the affected persons.

This, without prejudice to the fact that, as this Authority has agreed, the principle of minimization (art. 5.1.c) RGPD) would oblige to omit, prior to access, those identifying data (such as the NIF or the address of the affected persons) as well as other personal data that, beyond the identification of the awardee or the teachers and researchers assigned to the projects or publications, may be included and are unnecessary to achieve the goal of transparency pursued.

VI

With regard to the personal information that may be contained in the requested documentation on the recruitment of research staff and remuneration, it is necessary to reiterate the opinion of this Authority (FJ V IAI Report 34/2018).

In summary, and taking into account that article 9.1 of the LTC imposes the obligation of active advertising in matters of recruitment (sections b), d) and e) art. 9.1 LTC), the identification data of people hired as researchers for the research projects must be able to be given for purposes of control of the administrative activity, or of University personnel who have participated.

As already mentioned in FJ V of the IAI Report 34/2018, cited:

"With regard to their remuneration, the transparency legislation would in any case enable access to the remuneration received by high-ranking officials and the holders of superior and managerial bodies, because article 11.1.b) LTC requires the publication of remuneration (including allowances and per diems) received by such persons. On the other hand, as this Authority has maintained in previous reports on remuneration (IAI 9/2016 and IAI 19/2016, among others) available on the Authority's website, this same criterion can be extended with respect to staff who occupies positions of trust, of special responsibility within the organization, of free appointment, or that involve a high level of remuneration. Although in these cases the law does not provide for the publication of their remuneration on the Transparency Portal, with regard to requests for access to information, it must be borne in mind that these are sites that, due to their singularity and also due to the level of remuneration they usually bring associated, the knowledge of their remuneration can be relevant for the control of the u

As for the rest of the staff in which these circumstances do not occur, in principle, given that these are positions with a lower level of responsibility, and consequently with a lower level of remuneration, the evaluation of the use of public resources can be made having

information on remuneration grouped by category or according to the different types of workplace. In this sense the LTC (art. 9.1.d) provides for the publication of the RLT (from which you can find out certain remunerations corresponding to a job (salary, specific supplement and destination supplement)) and also information aggregated by groups and scales or levels (art. 11.1.e)). Given that this is information that must be the subject of active advertising, data protection regulations would not prevent access to this information.

This regime would be applicable even if it is temporary or temporary jobs not included in the RLT, given that article 9.1.d) LTC gives them equivalent treatment to the positions that are part of the RLT.

In these cases, the control of the good use of public resources can be carried out with the knowledge of the information on remuneration provided for in the RLT and in the general information referred to in article 11.1.e) of the LTC .

Nor would the data protection regulations prevent access to this information if it were made anonymously.

In the event that a remuneration concept different from those derived from the applicable regulations is drawn up, even though it is ad personam remuneration, or precisely for this reason, it could be justified to have to give access, especially in those cases in that in its granting there is a margin of discretion, given that in principle these retributive concepts would not have the publicity guarantees offered by both the annual budget laws and the RLT."

conclusion

Data protection regulations do not prevent providing a list of research projects and publications that have been carried out at the University, with identification of the people who participated, specifically, with identification of the teacher listed as to principal investigator, in the terms requested by the claimant.

Data protection regulations would not prevent the claimant from communicating project monitoring reports and expenditure justification, including requested invoices, as well as recruitment and remuneration information, including the identity of the affected persons .

This, without prejudice to omitting those identifying data (such as the NIF or the address of the affected persons) as well as other personal data that, beyond the identification of the successful tenderer or the teachers and researchers assigned to the projects, may be included in the requested documentation and are unnecessary to achieve the goal of transparency pursued.

Barcelona, March 27, 2019