

Ref. : IAI 17/2019

Claim: 133/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim presented by a citizen against a City Council for the denial of access to invoices related to the hiring of lawyers by the City Council and other companies and municipal foundations.

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 133/2019 submitted by a citizen against a city council for the denial of access to invoices related to the hiring of lawyers by the City Council and other municipal companies and foundations.

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 January 14, 2019, a citizen requests the following information from the City Council:
  - "invoices for all the expenses of the City Council, companies, foundations and municipal boards of trustees in relation to the hiring of lawyers for whatever reason from 2015 to the present,
  - concept for which the lawyers were hired and the price of each of them performances."
2. On January 18, 24 and 31, 2018, and February 4, 2019, the City Council refers the request for access to the various municipal boards and foundations.
3. On February 22, 2019, the City Council decides to estimate the request regarding the information on the expenses incurred by the City Council in connection with the hiring of lawyers, from 2015 to the present
4. On March 14, 2019, the interested party submits a claim to the GAIP against the City Council's resolution considering that the information provided is partial and does not correspond to his request.

Specifically, he explains that in some cases he has received a report on the hiring of lawyers but not the invoices. He also states that, with regard to the reason for the hiring, although the procedure number is listed, this is not clear because there is no explanation about the concept of the hiring (it is not known the reason or what the object of the procedure).
5. On March 5, 2019, 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.

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".

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

**Article 3.1.b) LTC states that this law is applicable, among others, "b) To public bodies and entities, companies with a majority stake or linked, public sector foundations, dependent public law entities or linked to the administrations referred to in letter a (...)"**

**In addition to the City Council, the municipal companies, foundations or municipal boards referred to in the request (included in the entities listed in article 3.1.b) of the LT), and exclusively for the purposes of the application of the Transparency Law, they have the qualification of public administration administration (art. 2.f) of the LTC.**

**As subjects bound by the transparency legislation, they are therefore subject to the fulfillment of the obligations established therein, and this includes both the active advertising obligations provided for in articles 8 to 15 of the LTC, and those that may derive from the exercise of the right of access provided for in article 18 of the LTC.**

**The object of the complaint is access to the invoices issued by external lawyers to the City Council and other municipal entities (companies, boards of trustees or foundations), and to information on the purpose of the contract and the price of each of the performances.**

**This information 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). However, 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 La**

### III

**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, from the perspective of data protection regulations, there is no impediment to access to data referring to legal entities that may appear in the documentation and/or information claimed.

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency). In accordance with article 6.1 of the RGPD, in order to carry out a treatment, it is necessary to have a legal basis that legitimizes this treatment, either the consent of the affected person, or any of the other circumstances, such as "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c). The right of access to public information (article 18 of the LTC) can oblige the Administration to transfer personal data of third parties without the need to obtain their consent.

Access to invoices related to the contracting of external legal services or to information on the subject of the contract and the price of each of the actions may affect, on the one hand, the personal data of the lawyer (self-employed professional) hired for the performance of the service and issuer of the corresponding invoice, and on the other hand to the personal data of third-party natural persons related to the purpose of the provision of the service.

#### IV

With regard to access to information related to contracted professionals that may contain the requested invoices, and in accordance with article 24.2 of the LTC, a prior weighting must be done between different rights and interests at stake.

Point out that in matters of administrative contracting, article 13.1. of the LTC obliges the Administration to publish, among others, ~~subject to the contract signed with the invoice~~ the procedure used to contract and the the identity of the successful tenderer, the duration, the number of tenderers, the award criteria, the comparative table of offers and the respective scores, and also the agreements and technical reports of the procurement process. This information must be up-to-date and refer to at least the last five years.

This obligation covers all contracts, including minors, and regardless of whether the successful tenderer is a legal or natural person. Thus, there would be no problem, from the point of view of data protection, to be able to access information about the awardees of these contracts, for example their identification, the fact that they were hired by the City Council , the amount of the services provided or the subject of the contract.

The information that may be included in the invoices is information linked to your professional sphere that would reveal occupational and economic data of the affected professional. The fact of knowing that a certain lawyer provides advisory services or legal assistance to the local administration, the specific type of services provided and what amounts have been charged, does not always have to cause damage from the point of view of the privacy of the professionals affected (in some cases it may even be a commercial argument), although it cannot be ruled out that in some cases it may generate some type of damage.

On the other hand, it is information that may be relevant for the purposes of evaluating the administrative management regarding the contracting of the services subject to the claim, with a direct impact on public resources. Taking this into account, and the fact that the public's access to the identity of the awardee is already provided for in the transparency legislation through active advertising, it does not seem that there could be any inconvenience in facilitating the claimant's access to the information about the identity of the lawyer, the type of service performed and

Be warned, however, that the principle of data minimization (Article 5.1 c) RGPD) requires that the data processed be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In application of this principle, it would be necessary to omit beforehand, those identifying data (such as the NIF, address) as well as other personal data that, beyond the identification of the successful bidder, may be included and are unnecessary to achieve the purpose of transparency chased

v

With regard to information about third parties directly related to the object of the provision of advice, legal assistance or defense in a specific process that could be affected by access to the claimed invoices or information about the object or reason for hiring, the following is considered.

The purpose of the provision that can justify the contract or the assignment of external legal services by the City Council or other municipal entities can be very diverse. Thus, this can consist of advice, legal assistance or defense in some specific legal area, up to a specific specific action (issuance of an opinion, a report or legal advice and assistance for the defense of the City Council or of an official or public position thereof before the administrative, social, civil or criminal contentious jurisdiction), which could derive from actions carried out by the City Council staff. In this context, it is possible that both in the invoices and in the information about the object of the service reflected in the contract, information referring to identified or identifiable third parties may appear.

As has been pointed out, the regulations on active advertising oblige to publish information on the subject of contracts (article 13.1 LTC). And in principle the object of the contracts could contain this information regarding these third parties. It remains to be seen, then, whether providing access to this personal information would be justified.

The claimant, when requesting access, expresses his interest in knowing "how much municipal public money has been spent on lawyers in recent years in the council and in the various municipal companies, foundations and municipal boards (...)." ."

The purpose of the transparency law is precisely to establish a system of relations between people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of quality of public information and administrative management and the guarantee of accountability and responsibility in public management (article 1.2 LTC). In this sense, having information about the actions that have justified the issuance of the invoices at the expense of the City Council would allow th

claiming to know and value what external legal services have been hired for and the public expenditure that has involved the performance of these services.

In response to the access request, the City Council would have given the claimant a list with the list of invoices issued by the different lawyers hired by the corporation, which includes the invoice entry number, the date of document, the total amount of the invoice, the name of the professional or professional office that would have issued it and a short explanatory text of the actions carried out.

According to the City Council's report through the GAIP, the list provided to the interested party was taken from the municipal accounting program based on the information transferred from it. He argues that the list of invoices initially extracted "was adjusted in some cases, reformulating the wording of the code "Explanatory text" which refers to "the object for which the invoices are issued, to the better identification of the provision of the service for which the invoice was issued." This reformulation has been made, as can be seen from the same report, in order to avoid the identification of third parties related to the object of the proceedings.

Among these third parties who would be affected are, as indicated by the City Council, municipal employees and officials who are identified and other people who have initiated administrative and/or judicial actions of any kind against the City Council.

Given the content of the corresponding information in the "explanatory text" section on the specific action of each invoice, you can see a series of actions related to legal assistance in the various legal processes opened in defense of the City Council or public employees of the corporation, with specification of the procedure number and corresponding court or tribunal.

The interested party shows his disagreement with the information provided, understanding that with this data he cannot know the specific reason or object that would justify the action and hiring of the external lawyer, information that he considers important because there are elected officials and workers researched publics.

Taking all this into account, and when making an assessment, it is necessary to distinguish, due to their nature and impact, among the actions that have as their object the defense of municipal employees, some of them elected positions in the respective courts of 'instruction or other criminal jurisdiction, and actions aimed at advising or defending the City Council in judicial or administrative proceedings initiated by third parties against the council.

## VI

With regard to the actions aimed at the defense of municipal employees or elected officials in the respective courts of inquiry or others of the criminal jurisdiction, it should be borne in mind that we are dealing with information related to the commission of infractions criminal or administrative.

According to article 23 LTC: "Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, the trade union affiliation, religion, beliefs, racial origin, the

health and sexual 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 document that must accompany the request".

On the other hand, article 15.1 of State Law 19/2013, of December 9, on transparency, access to public information and good governance, as a basic rule that guarantees a minimum content of the right of access to the entire state territory has:

"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 lead to a public reprimand infringer, access may only be authorized if the express consent of the affected person is obtained or if the latter is covered by a law with the rank of law."

The second additional provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), establishes that "Active advertising and access to public information regulated by Title I of Law 19/2013, of December 9, on transparency, access to public information and good government, as well as the obligations of active publicity established by regional legislation, will be subject, when the information contains personal data, to the provisions of articles 5.3 and 15 of Law 19/2013, in Regulation (EU) 2016/679 and in this organic law."

The joint interpretation of articles 23 LTC and 15 of Law 19/2013 leads us to conclude that access to personal information related to the commission of criminal or administrative offenses would only be authorized when the express consent of the affected or there is a norm with the rank of law that equalizes it.

However, the purpose of transparency seems to require being able to know not only the fact that an external lawyer has been hired for the legal defense of an elected official or other City Council staff, but also what intended specifically for these public resources. It is also necessary to take into account the special public interest that may have information related to the actions of public servants who may have incurred administrative or criminal infractions and on the municipal action in relation to these situations.

Therefore, following the criteria set out in the IAI report 22/2017 available on the Authority's website [www.apdcat.cat](http://www.apdcat.cat), a solution that could make the provisions of article 23 LTC and 15.1 LT compatible with the right to protection of the personal data of the affected persons, it could be not to facilitate the identity of the persons affected by the criminal proceedings or by administrative infractions, but simply to facilitate their status as an elected official or staff member of the City Council, and on the other hand, information on whether these are crimes against the Public Administration (Title XIX of the Penal Code) in relation to the City Council, in which case there could be a relevant conflict of interest.

Nor does it escape this authority, that it is possible that given the nature of the facts (criminal proceedings against an elected official or against a municipal worker) the population as a whole has already been able to obtain information about their existence and identity through other means of the affected people. In these cases it could be relatively easy to relate the

information obtained through the exercise of the right of access to public information, with the identity of these persons previously known. It may certainly be so, but in this case it would not be the information provided through the right of access that would allow information related to the commission of infringements to be known, but simply with the fact that the defense had been in charge of the corporation municipal

In the list that has been provided to the claimant, the different actions carried out in defense of a public employee or elected office, before the different courts of the criminal order, are specified. The claimant wants to be provided with more information about the subject of the procedure.

Warn, however, that the information about the facts that could have given rise to the administrative infraction, misdemeanor or crime in question, or about its classification, would go beyond what can be understood to be the subject of the contract for purposes of transparency in the control and management of public resources. Therefore, access to said information would not have the authorization provided for in article 13.1 LTC in relation to articles 23 LTC a

For all this, in the case raised, although information could be provided to the claimant on whether the object has been the defense of an elected office or other personnel of the corporation and on which actions are related to crimes against the Public Administration (Title XIX of the Penal Code) in relation to the City Council, it is necessary to limit access to any other information about the facts, specific conduct or typifications of the infractions, crimes or misdemeanors on which the specific judicial cases are concerned.

## VII

It is possible, as the City Council points out, that with the description of the action that justifies the price of the invoice, the natural persons with whom the City Council maintains the controversy may be identified directly or through the context.

Considering that the purpose of the access is to know the amount of municipal public money spent on lawyers in recent years in the council and in the different companies, foundations and municipal boards, it does not seem that to achieve this purpose it is necessary and may be justified a generalized access to the identity of all natural persons with whom the City Council maintains or has maintained legal or administrative litigation.

In fact, the claimant, in expressing his disagreement with the information provided by the City Council, underlines the importance of knowing the specific reasons for the actions due to the fact that there are elected officials and public workers investigated, and therefore, it does not seem that with regard to the rest of the judicial actions that would have motivated the hiring of lawyers, there is an interest in accessing the identity of the people who maintain or have maintained litigation

Consequently, and by application of the principle of minimization (Article 5.1. c) RGPD) it is considered that in all these cases, in the object of the provision, information that allows them to be identified should not be included.



## **CONCLUSION**

**Data protection regulations would not prevent access to invoices and/or information about the subject of contracts for the provision of external legal services, as long as access to the personal information of third parties related to the 'object of the provision in the terms set out in this report, to the personal data (TIN, address, etc.) of the contracted professionals that may appear on the respective invoices.**

**In the case of elected officials and other staff of the corporation, it would only be possible to provide information on whether the object of the contract has been their defense and whether the actions are related to crimes against the Public Administration (Title XIX of the Penal Code) . It will be necessary to limit access to any other information about the facts, specific behaviors or typifications of the infractions, crimes or misdemeanors on which the specific judicial cases are concerned.**

**Barcelona, May 28, 2019**

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