

IAI 19/2019

Claim: 188/2019

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 against a city council for the denial of access to a list of sanctioning files in environmental matters

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 188/2019 presented against a city council for the denial of access to a list of sanctioning files linked to environmental licenses in the municipality during 2018, in reusable electronic format.

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 February 9, 2019, a citizen presented a letter to a city council in which she requested "a list of sanctioning files linked to environmental licenses in the municipality in 2018, in reusable electronic format".**
- 2. Through Mayoral Decree 725/2019, of February 15, 2019, it is agreed to deny access to the public information requested under article 23 of Law 19/2014, of 29 of December, of transparency, access to public information and good governance.**
- 3. On April 29, 2019, the applicant filed a complaint with the GAIP against the city council for denying access to the requested public information.**

In the letter, the person making the claim states that they have denied him access to the information "because they consider that it contains confidential data. I consider that the information relating to companies does not contain protected data and with respect to natural persons they could be anonymized."

- 4. On May 8, 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 Authority of Data Protection, the APDCAT is the independent body that aims 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.

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), defines personal data 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 of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person" (article 4.1)).

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

Article 4.2) of the RGPD considers "treatment": any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction."

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. In

Specifically, section c) provides that the treatment will be lawful if "it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

For its part, article 86 of the RGD provides that "the personal data of official documents in the possession of any 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, organism or entity in accordance with the Law of the Union or Member States that applies to 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 December 29, on transparency, access to public information and good governance (hereafter, LTC), aims to regulate and guarantee the transparency of public activity.

The first additional provision, section two, of this Law establishes that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law. "

The environment is one of these subjects with a special regime of access, regulated, mainly, by Law 27/2006, of July 18, which regulates the rights of access to information, of public participation and access to justice in environmental matters (hereafter, LAIA).

State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereinafter, LTE), expressly establishes the application of the LAIA to access to environmental information, in their first additional provision, establishing:

"2. Those matters that have a specific legal regime for access to information will be governed by its specific regulations, and by this Law with a supplementary character.

3. In this sense, this Law will apply, to the extent not provided for in its respective regulatory rules, to access to environmental information and to information intended for reuse."

The person making the claim requests a "list of sanctioning files linked to environmental licenses in the municipality in 2018".

The application of this specific regulation to the case at hand basically depends on whether the information requested by the person making the claim should be considered included or not within the concept of environmental information, for the purposes of the LAIA.

Article 2.3 of the LAIA defines what is to be understood by "environmental information" in the following terms:

"3. Environmental information: all information in written, visual, audio, electronic or any other form that relates to the following issues: a) The state of the elements of the environment, such as air and atmosphere, water, soil, the earth, landscapes and natural spaces, including wetlands and marine and coastal areas, biological diversity and its components, including genetically modified organisms; and the interaction between these elements.

b) The factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, spills and other releases into the environment, that affect or may affect the elements of the environment mentioned in letter a) . c) Measures, including administrative measures, such as policies, rules, plans, programs, environmental agreements and activities that affect or may affect the elements and factors mentioned in letters a) and b), as well as the activities or the measures intended to protect these elements. d) Reports on the execution of environmental legislation. e) The analyzes of the cost-benefit relationship and other analyzes and assumptions of an economic nature used in the decision-making related to the measures and activities cited in letter c), and f) The state of health and security of the people, including, as the case may be, the contamination of the food chain, human living conditions, goods of historical, cultural and artistic heritage and constructions, when they are or may be affected by the state of the environmental elements mentioned in letter a) or, through those elements, by any of the extremes mentioned in letters b) and c).”

From the literal tenor of the precept (which derives from that established in Directives 2003/4/CE and 2003/35/CE, which the LAIA transposes) it can be inferred that the legislator wanted to give the concept of environmental information a broad sense, which, in accordance with the jurisprudence of the TJCE (for all, the STJCE of June 17, 1998, case 321/96, Mecklenburg), would include "any information relating to the state of the different elements of the environment that there are mentioned (in article 2.a) of the Directive), as well as the activities or measures that may affect or protect the state of said elements, including administrative measures and environmental management programs. (...) using the term "measures" only to specify that among the acts contemplated by the Directive must be included all forms of exercise of administrative activity".

The information on the sanctioning actions carried out by the City Council, within its area of competence, for the purpose of monitoring compliance with the legality of those activities subject to the environmental license regime and the result thereof, is one of the information that could be considered included within this concept of "environmental information".

Therefore, it seems appropriate to consider that the provisions of the LAIA must be applied to the information request of the person making the claim and, additionally, where not provided for by the LAIA, those of the LTC.

III

Article 3.1.a) of the LAIA recognizes citizens' right to access the environmental information available, in this case, to the City Council, without the need to allege a specific interest.

In the present case, as we have seen, the claimant requests a "list of sanctioning files linked to environmental licenses in the municipality in 2018", without further details.

It is understood that this report could include, at the very least, information on the number of disciplinary files processed by the City Council, the number and date of each file, the offense charged, the penalty imposed and the identity of the offending person.

In view of the terms of the request, there is no intention to access the content of the disciplinary files, which could include other personal information of the offender or of third parties.

Article 13 of the LAIA regulates certain exceptions to access to environmental information, among which mention should be made of the one established in section 2.f).

According to this precept of the LAIA, access to environmental information can be denied if its disclosure could negatively affect "the confidential nature of personal data, as regulated in Organic Law 15/1999, of December 13, Protection of Personal Data, provided that the person concerned has not consented to its treatment or disclosure."

However, it must be taken into account that the LAIA itself also requires that the reasons for denying access to environmental information be interpreted restrictively, in such a way that the public interest served with its disclosure with the interest served with its refusal (article 13.4).

From the perspective of data protection, it must be considered that access to environmental information will have to be restricted or limited, in any case, when it involves an affection for data considered particularly sensitive, in the terms of the Article 9 of the RGPD (data revealing ethnic or racial origin, political opinions, religious or philosophical convictions or trade union affiliation, genetic data, biometric data intended to uniquely identify a natural person, data relating to the health or data relating to the sexual life or sexual orientation of a natural person), or for those data which, despite not being included in this category, the Spanish legislator has been establishing a reinforced system of protection (data relating to infringements and administrative or criminal sanctions).

The information consisting of a list of sanctioning files linked to environmental licenses in the municipality during the year 2018 as requested by the person making the claim is information that must be understood as referring to the commission of administrative infractions.

It is not stated in the file that in the present case the consent of the potentially affected persons has been provided so that said information can be disclosed (article 13.2.f) LAIA). And neither do the penalties for this type of infraction entail a public reprimand for the offender (article 83.3 Law 20/2009, of December 4, on prevention and environmental control of activities).

Therefore, access to the environmental information requested by the person making the claim, as long as it refers to physical persons (information relating to legal persons remains outside the scope of protection of data protection legislation (article 1 RGPD)), should be limited on the basis of what is provided for in article 13.2.f) of the LAIA and data protection legislation (article 10 RGPD and article 27 LOPDGDD).

IV

It must be taken into consideration that the person making the claim expressly indicates in their claim that access to the requested information occurs by anonymizing the personal data that may be included.

Article 4.1 of the RGD defines the concept of personal data as "all information about an identified or identifiable natural person ("the interested party")" and considers as an identifiable natural person "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 the physical, physiological, genetic, psychological, economic, cultural or social identity of said person."

Consequently, the RGD does not affect the treatment of anonymous information, that is "information that is not related to an identified or identifiable natural person", nor "to the data converted into anonymous so that the interested party is not identifiable" (considering 26).

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 RGD).

So, to the extent that the list of sanctioning files linked to municipal environmental licenses during the year 2018 is facilitated prior to the anonymization of the data relating to the offenders, in such a way that they cannot be identified without disproportionate efforts, there would be no inconvenience, from the perspective of data protection, for this information to be delivered to the person making the claim.

conclusion

Given the terms in which the present claim is made (prior anonymization), there would be no inconvenience, from the point of view of data protection, for the person making the claim to access a list of sanctioning files linked to municipal environmental licenses during 2018, to the extent that it is guaranteed that natural person offenders cannot be identified directly or indirectly without disproportionate efforts.

Barcelona, May 28, 2019