

Ref. : IAI 21/2019

Claim: 232/2019

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 town council for the denial of access to various information on building, activity and first occupation licenses granted to certain estates in the municipality.

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 232/2019 presented by a citizen against a city council for the denial of 'access to various information on building, activity and first occupation licenses granted to certain estates in the municipality.

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 13, 2019, a citizen submitted a letter to the City Council -(...)- in which he requested access to various information on construction, activity and first occupation licenses granted in polygons 6 and 7 of the Land Registry under the protection of the Transparency Law and prior anonymization, if applicable, of protected personal data. In particular, it is requested:

- Copy of all agreements and/or awarding decrees, and of the previous report or reports of building permits, for construction, interior distribution, rehabilitation, arrangement, consolidation or any other type of major work or minor relating to homes, farms, ships of any kind, etc. between January 1, 2007 and December 31, 2018.
- Copy of all agreements and/or decrees granting works licenses granted during the period indicated for the replacement of the slab or roof of agricultural warehouses, warehouses, farms and any other building, as well as the post-works report or reports on compliance with the conditions of the licence, with indication of the authority and the City Council staff responsible for verifying that the works carried out comply with the requested works licence.
- Copy of all licenses or authorizations for economic and environmental activities granted in the same estates, during the indicated period, including those relating to tourist accommodation, rural houses, farms and the like.
- Copy of all agreements and/or decrees granting licenses for first occupation in the same estates between January 1, 2010 and December 31, 2018.

2. On February 25, 2019, the City Council responded to the access request indicating to the interested party that the information subject to the request contains personal data that must be processed applying the criteria provided for in articles 23 and 24 of Law 19/2014, and which can be consulted as soon as they have the requested documentation.

At the same time, the interested party is informed that, with regard to the years 2016, 2017, 2018 and 2019, a copy of all the minutes of the local government board, where the agreements adopted appear, are available at the corporate electronic headquarters in each subject, and where the nature of the technical report issued in the planning file is stated.

3. On April 8, 2019, the interested party's claim against the City Council was received by the GAIP, considering that their request was denied. He expresses his interest in accessing the minutes of the Local Government Board, the Plenary and/or the resolutions issued before 2016, given that these are documents that are not published at the corporate headquarters.

He points out that the City Council has not informed them that the request has been transferred to affected third parties, and they state that strictly speaking the access should not affect the rights and interests of third parties, given that it was already indicated in the request that the information was requested, if necessary by anonymizing the "protected personal data of natural persons".

Likewise, and with respect to the requested reports, it considers that it is insufficient to have the information on the nature of the report, which is what can be stated in the respective acts referred to by the City Council, and they insist on the need to know the content of each of the technical, legal and economic reports that underpin the agreement or resolution.

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 governance, 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

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 that 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, there must be no inconvenience from the perspective of data protection regulations in providing the interested party with the information referring to legal entities that may be contained in the requested documentation and/or information.

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."

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

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

At the same time, article 86 of the RGPD 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, body or entity in accordance with the Law of the Union or of the 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 29 December 2014, on transparency, access to information and good governance, aims to regulate and guarantee the transparency of public activity.

State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter LTE), in its articles 12 (right of access to public information) is pronounced in similar terms and 13 (public information).

The second additional provision of the LOPDGDD, states that "Active advertising and access to public information are regulated by Title I of Law 19/2013, of December 9, on transparency, access to public information and good governance , as well as the active advertising obligations 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."

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 purpose of this claim is to access information on the building, first occupancy and activity and environmental licenses granted by the City Council in two specific plots of rural property in the municipality. 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).

To warn that access in this case affects control actions by the Administration in two highly regulated subjects such as urban planning and the environment.

Thus, on the one hand, information is requested related to works and first occupation license files granted within the framework of Legislative Decree 1/2010, of August 3, which approves the revised text of the Law of urban planning

On the other hand, access is requested to information related to license files or authorizations for economic and environmental activities that are fundamentally governed by Law 20/2009, of December 4, on the prevention and environmental control of activities (hereafter LPACA).

Environmental authorizations or licenses are, according to article 4. a) of the LPACA, "administrative resolutions by means of which the competent body in environmental matters authorizes a specific activity or several activities and installs them facilities or part of the facilities they occupy, located in the same center or in the same establishment and belonging to the same person or company, subject to the conditions necessary to guarantee compliance with the objectives and the provisions of this Law."

The first additional provision, section two, of the LTC 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. "

Access to information related to the environment has a specific access regime provided for in Law 27/2006, of July 18, which regulates the rights of access to information, public participation and of access to justice in environmental matters (hereafter, LAIA).

In turn, the first additional provision of Law 19/2013 expressly establishes the application of the LAIA to access to environmental information, 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 that intended for reuse."

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 land, landscapes and natural spaces, including wetlands and areas

marine and coastal, 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).”

Considering that environmental authorizations or licenses are the mechanism through which the system of administrative intervention in environmental matters is articulated, the information related to their granting is information that is subject to the specific access regime provided for in the LAIA.

This differentiation regarding the access regime between both subjects (urban planning and the environment) forces us to analyze the effect on personal data that access to information related to the granting of the respective licenses and /or authorizations separately.

IV

With regard to access to information related to construction and first occupation licenses, the claimant requests that he be provided with a copy of all agreements and/or granting decrees, as well as the previous reports that justify the resolution and subsequent reports verifying compliance with the conditions established in the respective building permits.

In accordance with article 20 and s. of the LTC, the right of access to public information (article 18 LTC) can be denied or restricted for the reasons expressly established in the laws. Specifically with regard to information that contains personal data, it is necessary to assess whether the right to data protection of the affected persons would justify or not the limitation of the right of access to public information invoked by the individual bidding

Although the content of the specific documents to which access is sought is unknown, it is foreseeable that these may contain, in addition to the identification data of the employees or public officials responsible for the processing of the respective licenses, the personal data of the architects those responsible for the projects, as well as the personal data of the applicants and/or holders of the respective licenses.

With regard to the merely identifying data of public employees or positions involved in the exercise of their functions in the processing of the respective licenses, and in accordance with article 24.1 of law 19/2014, "1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights".

This precept would include in this case, the identification data (name, surname and position) of the employees or public positions identified in the resolutions of the license files, as well as those responsible for the preparation of the technical, economic or legal reports prior to the granting of the license, and subsequent verification of compliance with the licensing requirements.

The identification of the authority and/or personnel in the service of the corporation responsible for carrying out this subsequent control task is specifically requested, and to the extent that it is information related to the organization and operation of the administration, it should be provided to the claimant, in accordance with article 24.1 of the LTC.

All this, regardless of the fact that some special circumstance may arise that requires the protection of the affected person.

With regard to the rest of personal information, and given the nature of the files that are requested, it does not seem that there can be data that is particularly protected under the terms provided for in Article 23 LTC, that is, regarding ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, or the commission of criminal or administrative offenses that do not entail a public reprimand to the offender. In the event that there is information of this type and in the absence of express consent of the holder, access should be limited.

Beyond the specially protected data referred to in article 23 of the LTC, and in accordance with article 24.2 LTC, a weighting must be done between the public interest in the disclosure of information and the right to data protection of the affected persons:

"If it is other information that contains personal data not included in article 23 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in disclosure and the rights of the people affected. To carry out this weighting, the following circumstances must be taken into account, among others:

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."

In matters of urban planning, the right of access to information is particularly relevant given the recognition of public action (Article 12 of the Revised Text of the Urban Planning Law approved by Legislative Decree 1/2010, of August 3, TRLU), from which any citizen

can demand before the administrative bodies and before the administrative contentious jurisdiction the compliance with the legislation and urban planning, an exercise that must be adjusted to what is established by the applicable legislation. Consequently, the public action allows anyone to contest the various instruments of arrangement, as well as the acts of their application.

Planning licenses must be granted in accordance with the provisions of the TRLU, urban planning and municipal ordinances (art. 188 1. TRLU).

In turn, article 3.2 of Decree 179/1995, of 13 June, which regulates the Regulation of works, activities and services of the local entities of Catalonia (ROAS) provides that "the intervention activity of the local authorities must conform to the principles of legality, equality, proportionality and congruence with the reasons and ends that justify the power to intervene, respect for individual freedom and the least burden on citizens."

Article 84.1 of the ROAS already provides for certain publicity to be given to agreements or resolutions granting licenses, by arranging that these be published in the manner provided for in the law and the ordinances of the corporation, and requiring, in all case, that they must be inserted on the notice board and published, when there is one, in the municipal information bulletin.

In this context and for the purpose of monitoring urban planning legality, citizens must be able to access the content of the licenses, the respective technical and legal reports required by the article (188.3 TRLUC), which would justify the resolution, and if applicable, to the subsequent verification reports of adjustment of the works to the terms contained in the respective licenses. All of this would allow the claimant to know what intervention and control actions have been carried out by a City Council when proceeding to authorize an action in this area, and the technical and legal elements that justify them.

The public interest in the control of urban legality could, without a doubt, justify access to the identity of the persons requesting and/or license holders, or of the architects responsible for the preparation of the technical projects of the works, which may be included in the requested documentation.

In this case, the purpose of the access is, as indicated by the claimant, to find out the reasons that justify the construction of several roundabouts on the N-340 road as it passes through (...), and to know who may ultimately be harmed and/or benefited from the construction of these roundabouts. At the same time, however, it requests the information, if necessary, anonymizing the personal data of the natural persons affected.

In the letter of complaint, he considers that in strictness the access should not affect the rights or interests of third parties, insisting on the fact that the documentation was already requested, if necessary, anonymizing the data of the natural persons affected.

The principle of data minimization (Article 5.1 c) RGPD) requires that the data subjected to processing are adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In this case, it does not seem that the applicant is interested for the purpose of access to have the identity of the license holders and/or applicants if these are natural persons.

So, aside from the general considerations that have been made about the possibility of accessing the identification of the holders of construction or first occupation licenses, in this case, in view of the terms in which the application, data that are unnecessary to achieve the purpose pursued, such as the first and last names of the applicants and/or license holders, or any other data that may be omitted prior to access may appear in the requested documentation and that is irrelevant for the purposes of satisfying the claimant's right of access.

Warning that the fact that these data are omitted does not mean that the information referring to these people has been anonymized. Anonymization would require the elimination of all information that could allow the identification of the person or persons affected, taking into account not only the information contained in the document that is delivered but the data that can be obtained by other means, assessing whether or not there is a real risk of re-identifying the affected persons without making disproportionate efforts.

In the case at hand, it is possible that the claimant can find out by himself or through the neighbors who are the owners of the buildings to which the respective licenses have been granted, but in any case, the elimination of the name and surnames or other identifying data that may be included, would be more respectful of the principle of data minimization.

v

Access to the licenses and/or environmental authorizations granted for activities referred to in the application is governed, as we have seen, by the access regime provided for in the LAIA, and additionally by the transparency legislation.

Article 3 of the LAIA recognizes citizens' right to access the environmental information available, in this case, to the City Council, without requiring them to declare a specific interest.

However, this right of access is not absolute and may be limited by some of the exceptions provided for in article 13 of the same law. Specifically, with regard to personal data, section 2 of this precept provides that requests for environmental information may be denied if the requested disclosure may negatively affect "f) the confidential character of the data personal, as regulated in Organic Law 15/1999, of December 13, on the Protection of Personal Data, provided that the person concerned has not consented to its treatment or disclosure."

However, the same precept requires in section 4 that the reasons for denying access to environmental information be interpreted restrictively, in such a way that the public interest is weighed in each specific case its disclosure with the interest served with its refusal (article 13.4).

Thus, the denial of access to environmental information due to the occurrence of an exception does not operate automatically, as the statement of reasons for the Law points out, "but that the public authority must weigh in each case the interests public in attendance, and justify the refusal

to supply the requested information", forcing it to interpret them restrictively.

Taking into account the eminently technical nature of the information that environmental authorizations and licenses should contain, in accordance with articles 29 and 49 of Law 20/2009, it does not seem that access to the requested documents can affect to personal data, beyond the identifiers of the authorities or public positions responsible for the granting or preparation of the reports required by the regulations, and of the natural persons holding the authorizations or licenses granted.

The LPACA foresees in articles 20 and 41 the opening of a public information period during the processing of license authorization files respectively, in which the right of citizens to all available information on the procedure, with the exception of the application data and accompanying documentation protected by the confidentiality regime. (20.5 and 41.2).

In turn, article 30.2 of the same law provides for the publication in the DOGC of the dispositive part of the resolutions by which environmental authorizations are granted or modified and requires their incorporation into the environmental database of activities . Section 3 of this same precept states that "the entire content of environmental authorizations is publicly accessible, with the limitations established on the right of access to information on environmental matters and other applicable regulations.

In the case of licenses, article 50.2 obliges to publicize the resolution of the environmental license procedures, through its incorporation into a database of environmental licenses of activities accessible electronically.

Taking into account the legal recognition of the public interest in obtaining information related to environmental authorizations and licenses, it does not seem that the claimant's right to obtain the requested information can generate doubts. Access to specific documents would allow the claimant to check which activity authorizations or licenses have been granted during the period indicated, the date of grant, the type of activity authorized, the location, the responsible authority or public office of its granting, as well as the adequacy of its content to the requirements demanded by environmental regulations.

All this can be checked, however, without the need to sacrifice the privacy of the natural persons holding the authorizations or licenses. The environmental information they contain is directly related to the type of productive activity that is intended to be carried out and not to the specific person who carries it out. The claimant expressly states in the request, and subsequently insists in the claim, the will to obtain the documentation, if applicable, anonymizing the data of the natural persons affected. Therefore, it does not seem to be of interest for the purpose of access to have the identity of the license holders and/or applicants if these are natural persons.

So, and aside from the general considerations that have been made about the possibility of accessing the identification of the holders of environmental authorizations and/or licenses, taking into account the provisions of article 13 sections 2.f) and 4 of the LAIA, and the principle of data m

may omit prior access to the identification data of the natural persons holding the authorizations and environmental licenses claimed.

CONCLUSION

The data protection regulations would not prevent access to the merely identifying data of the positions or public employees responsible for the granting of planning licenses, and for the preparation of previous or subsequent reports issued as part of the actions of control of urban legality. Nor would it prevent access to the identification data of the authorities or public positions that may be identified in the authorizations or environmental licenses requested.

On the other hand, and given that the same request allows for the possibility of obtaining anonymized data, the principle of minimization would justify omitting the identifying data of the natural persons holding these urban and environmental licenses that may be included in the requested documentation.

Barcelona, June 4, 2019