

Ref. AJ : IAI 22/2019

Claim: 231/2019

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 against a city council for the denial of access to various information about various public works and modifications of the general urban planning plan in polygons 6 and 7 of the rural cadastre

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 231/2019 presented by a citizen against a city council for the denial of 'access to various information about various public works and modifications of the general urban planning plan in polygons 6 and 7 of the Rural Register of that municipality.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, 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 about various public works and modifications to the general plan of urban planning in polygons 6 and 7 of the Cadastre de Rústica, between January 1, 2007 and December 31, 2018, under the protection of the Transparency Law and prior anonymization, where appropriate, of protected personal data. In particular, it is requested:

- Copy of the files processed for the construction works, opening, arrangement, paving or any other action relating to roads carried out in those two estates during the indicated period, and the cost of each of them.
- Copy of the files initiated for the timely modification of the general urban plan of the municipality in those polygons during the indicated period, and the cost of each one in the case that they have been entrusted to an external architect or technician.
- 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, housing for tourist use, hotels, restaurants, facilities paintball, camping 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 of the mayor's office and the delegated councilors issued before the year 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".

It specifies that the requested documentation refers only to files already processed for works and roads and for the timely modification of the municipality's General Urban Plan and requests that its right to access the information be recognized in the terms set forth in the application initially submitted.

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 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, 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.

other circumstances, such as that "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 RGD 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 RGD when so established by a rule with the rank of law.

At the same time, 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, 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 establishes 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".

III

The purpose of this claim is to access information on the public works files, the files for modification of the municipality's general urban plan, and on the environmental licenses or authorizations, as well as on the first occupation licenses, processed by the 'City hall in two specific polygons 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 files of first occupation granted within the framework of Legislative Decree 1/2010, of August 3, which approves the Revised Text of the Urban Planning Law.

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 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).”

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 in the foundations VI and VII of this report.

IV

With regard to access to the files of public works executed by the City Council, access is requested to the files processed for the construction, opening, arrangement, paving or any action related to roads executed in the estates 6 and 7 of the Rural Register of the municipality, and the cost of each of them.

The set of documentation related to the processing of the process of preparation and approval of work projects, in the terms provided for in articles 37 and 38 of the ROAS, includes the act of initial and final approval, the project, the eventual allegations presented during the public information procedure and individual notification, if applicable, to the rights holders, as well as other administrative acts of the procedure.

The works project must contain, at a minimum, the report, a budget, the specific technical prescriptions document where the works are described and their execution regulated, the plans (art. 24 ROAS) , as well as the rest of the additional documentation that is appropriate, such as, if applicable, the detailed list and valuation of the assets to be occupied and, if expropriated, and the list of their owners (art. 25.2.c) ROAS).

On the other hand, the file will include the set of documentation related to the execution of the work and the management of the work, and which consists of the technical and administrative documents (verification documents start of work, reception of work, work certifications).

Both the work project and the execution can be carried out by the technical services of the same local body, or it can be awarded to a third party through the execution of a contract under the terms provided for in Law 9/2017, of 8 of November, on Public Sector Contracts, by which Directives of the European Parliament and of the Council 2014/23/UE and 2014/24/UE, of 26 February 2014, are transposed into the Spanish legal system, (hereinafter LCSP), In this case the prior processing of the corresponding procurement file is required.

Placed in this context, and taking into account the type of documents that would in principle be contained in these files, it can be warned a priori that these may contain numerous personal information that may refer to the different agents involved in the execution (the author of the project, the person responsible for the execution, the builder, the works director, etc..) as well as the owners or holders of affected rights, or any person who has submitted allegations to the works project, in the public information procedure provided for in article 37 and 38 of the ROAS.

With regard to article 24.1 of the LTC, in principle there would be no problem to be able to identify the public employees who have intervened due to their position in the processing of the requested files. In this case, the identification data (name and surname and position held) of each of the agents involved would be included: the author of the work project, in case it has been drawn up by a specialist who is part of the technical services of the City Council, any of the technicians who participated in the preparation of the reports, as well as the construction manager - if he is a City Council employee - who is responsible for checking and monitoring the correct performance of the work, and must assume final responsibility for the execution of the project before. It would also include the identification data of the rest of the City Council's public employees who have intervened in the administrative processing of files in the exercise of the functions of the position they hold.

With regard to the rest of personal information, which in principle does not seem to have to include data specially protected from those provided for by article 23 of the LTC, the prior weighting required in the article must be done 24.2 LTC.

v

With regard to personal information about the different agents involved in the process (designers, builders in charge of execution, or the director of the work if this is an external practitioner hired by the city council), remember that in of administrative contracting, article 13.1. of the LTC obliges the Administration to publish, among others "d) The contracts signed, with the indication of the object, the amount of the tender and award, the procedure used to contract and 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."

The obligation to publish covers all contracts, including minors, and regardless of whether the successful tenderer is a legal or natural person, and enables the citizen's access to the identity

of the successful tenderer, the object of the contract and the amount of the tender and award, including contractual modifications and contract extensions, among other data.

Consequently, there should be no inconvenience in facilitating access to information on the identity of any of the people who have been awarded the respective contracts (designers, builders and/or external construction managers), as well as the data on the project and the specific work contracted (object of the contract), the price paid for the provision of the service or the completion of the work (award price), as well as information on the modifications or extensions granted.

The information that may be contained in the reference files would in any case be information linked to the business or professional activity of the agents involved. In the case of builders (individual entrepreneurs), it cannot be ensured that this information, originally referred to the company, does not end up affecting the entrepreneur and his privacy. However, it cannot be concluded that the fact of knowing who has drawn up one or several projects, who has built one or several works on behalf of the municipal administration, or who is the practitioner in charge of the construction management, must necessarily cause harm from the point of view of your privacy.

The purpose pursued by the claimant must be framed in the participation of citizens in the control of administrative management and the guarantee of the retention of accounts by those responsible for public management, especially in those actions that have a clear impact on use of public resources. From this perspective, access to the technical, administrative and economic documentation that may form part of a works file promoted by the local entity, may be relevant for the purposes of being able to verify eventual irregularities in public management in public works matter.

Public access to the identity of the awardees is already provided for in the transparency legislation and the publication of the object of the contract, the award price, as well as possible contract modifications or extensions is also provided for. Access to the rest of the technical documentation that had been prepared and contained in the file, would not imply a greater interference in the privacy of those affected and instead is information that, as we have pointed out, may be relevant for the purposes of evaluating the management administrative in the area of the execution processes of local bodies, management that

It is true that the claimant requests the information anonymizing, if necessary, the data of the natural persons affected, but taking into account the nature of the data, the provisions of the legislation on transparency in matters of recruitment and the purpose pursued by this legislation, it would not be justified to limit access to the identity of these awardees, responsible for the execution of the municipal works subject to the claim, which is why the claimant's right of access must prevail in this case.

However, by application of the principle of minimization, it would be necessary to omit beforehand, those identifying data (such as the NIF, telephone numbers, electronic addresses, or the address of the affected persons), as well as other personal data that, beyond the identification of these agents may appear there and are unnecessary to achieve the goal of. Regarding the information that may be contained on third parties who could have intervened (for example, people who could have presented allegations during the period

of public information to which the works project must be submitted before its final approval), taking into account the terms in which the request is formulated, the need to sacrifice the privacy of these is not appreciated people

If the objective is to control the actions of municipal managers in the management of public works, it could in any case be relevant to know whether or not allegations were presented, in what sense and what was the response of the 'Administration, but this information should be able to be provided without the need to identify the people affected. From the claimant's own statements when requesting access, it does not appear that it is necessary to obtain said information, and therefore the identifying data of these people that may appear in the requested documentation should be omitted.

Finally, in anticipation of article 25.2.a) of the ROAS, the documentation of these files could include "a) The detailed list and valuation of the assets to be occupied and, where appropriate, expropriated and the relationship of its holders."

With respect to these holders, it should be borne in mind that the 17 et seq. of the Expropriation Law Forçosa, of December 16, 1954 (LEF), provide that once the initial list of assets and rights affected has been approved, a period of public information must be opened so that the owners who are affected can legislate what they consider pertinent in order to correct the errors in the approved relationship.

Specifically, the regulations provide for the publication of the list of assets and rights affected by the expropriation to be published through the insertion of advertisements in the official gazette of the province, in one of the most widely circulated newspapers in the province and at the counter of 'corresponding announcements, which must contain the registration data of the affected estates, including the address, owner, charges, employment status, etc.

For purposes of transparency and control of administrative action in the matter of expropriations, it may be relevant not only to know which properties have been affected but also the identity of the people who could have benefited from an eventual forced execution as a result of the municipal works carried out. Taking this into account, and since it is already planned to publish the identity of these holders in the official newspapers, it does not seem that it can be justified in this case to limit the claimant's access to said information.

However, it would be necessary to omit beforehand, those identifying data (such as the NIF, telephone numbers, electronic addresses, or the domicile of the affected persons), as well as other personal data that, beyond the identification of these persons, may be included and are unnecessary to achieve the goal of transparency pursued.

VI

In relation to the one-off modification of the municipality's general urban plan, the claimant requests a copy of the files initiated in the field of estates 6 and 7, during the period from January 1, 2007 to December 31 of 2018, as well as the corresponding cost, in the event that an external architect or technician has been commissioned.

With regard to urban planning and management processes, the urban legislation regulates in detail the procedure for publicity and citizen participation. Thus article 8 of Legislative Decree 1/2010, of August 3, which approves the Revised Text of the Planning Law, establishes that:

"5. Citizens have the right to consult and be informed about the content of urban planning and management instruments and, for these purposes:

a) In the public information of the urban planning instruments, it is necessary that, together with the plan, a document covering the following extremes is exposed:

first Plan delimiting the areas subject to suspension of licenses and processing procedures, and specification of the suspension term and the scope of the licenses and processing that are suspended.

second A summary of the scope of their determinations and, in the case of the review or modification of an urban planning instrument, a map identifying the areas in which the proposed arrangement alters the current one and a summary of the scope of this alteration.

(...)"

In addition, in matters of urban planning, the right of access to information is particularly relevant given the recognition of public action (Article 12 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 different instruments of arrangement, as well as the acts of their application and to access public information for that purpose.

In accordance with article 59 of the TRLU, municipal urban planning plans must contain a descriptive and justifying report of the plan, the complementary studies, the information and urban planning plans of the territory, the urban rules, the catalog of assets to be protected, the agenda and the economic and financial evaluation of the actions to be developed, the environmental documentation, the municipal planning action program, if applicable, and the social report.

Also, article 73 of the TRLU foresees that the competent bodies can agree to "suspend the processing of specific derived urban planning plans and urban management and urbanization projects, as well as suspending the granting of plot licenses- lation of land, construction, reform, rehabilitation or demolition of buildings, installation or expansion of specific activities or uses and other related municipal authorizations established by sectoral legislation."

In accordance with the aforementioned regulations, the files for the modification of the urban planning will contain, in addition to the documentation referred to in article 59 and 8.5.a) of the TRLU, the result of the corresponding administrative processing, among which, the one corresponding to public information, mandatory in the processing of urban planning procedures. In addition, it could also incorporate, when the drafting of the planning review project has not been carried out by the technical services of the same local entity, the external contracting

In this context, and taking into account the type of documents that would in principle be contained in these files, it can be foreseen that these may contain numerous personal information that may refer both to the different agents involved (the authors of the descriptive report, of the plans , and the rest of the technical documentation that makes up the file), such as the persons holding affected rights, or any person who has submitted allegations in the corresponding public information procedure.

As already explained in the fourth legal basis of this report, access must be given to the personal data of the employees or public officials involved, which are contained in the documentation that is part of the planning modification file , as well as those responsible for the preparation of the technical documentation, when they have been prepared with the city council's own means, by application of article 24.1 of the LTC, insofar as it is merely identifying data directly related with the organization, operation or public activity of the Administration.

By application of the principle of minimization provided for in article 5.1.c) of the RGPD, these data must be limited to those necessary for their identification (name, surname and position).

With regard to the rest of personal information, the criteria set out in the fourth and fifth legal bases of this report are reproduced according to which, beyond the data considered specially protected in article 23 of the LTC (which, if it exists, access should be limited) the prior weighting required in article 24.2 LTC must be carried out, with the same result as stated in the aforementioned grounds.

Consequently, with regard to the identification data of those responsible for the preparation of the technical documentation that makes up the file, in case it has been the subject of external contracting, and the cost thereof, in accordance with the obligations of active advertising in matters of administrative contracting of article 13.1. of the LTC, would have no problem in providing access to this information.

Finally, with regard to the information that may be contained on third parties who could have intervened, (people who could have submitted allegations during the public information period), taking into account the terms in which the request is formulated not the need to sacrifice the privacy of these people is appreciated.

As has already been explained, if the objective is to control the actions of municipal officials in the processing of the planning modification file, it could in any case be relevant to know whether or not allegations were presented, in what sense and what was the Administration's response, but this information should be able to be provided without the need to identify the people affected. From the claimant's own statements when requesting access, it does not appear that it is necessary to obtain said information, and therefore the identifying data of these people that may appear in the requested documentation should be omitted.

VI

Access to licenses and/or environmental authorizations for activities granted during the period from January 1, 2007 to December 31, 2018, in relation to polygons 6 and 7 of the Municipality's Rústica cadastre, to which point 3 of the access request refers, has been the subject of analysis by this Authority in the IAI 21/2019 report, the content of which is transcribed below:

"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 re

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 minimization, can be omitted prior to access to the identification data of natural persons holding the environmental authorizations and licenses claimed

VII

Access to the copy of all the agreements and/or decrees granting licenses for first occupation, of polygons 6 and 7 of the Rural Cadastre of the Municipality, in the period between January 1, 2010 and 31 of December 2018, referred to in point 4 of the request, has been the subject of analysis by this Authority in the IAI 21/2019 report, with the content transcribed below:

"Regarding 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 previous reports that justify the resolution and subsequent reports

verification of 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

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 appli

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 planning 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 appear that the applicant is interested for the purpose of access in having 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. "

CONCLUSION

Data protection regulations would not prevent access to information that does not contain personal data.

With regard to the information that may contain personal data, the data protection regulations would not prevent access to the merely identifying data of public officials or employees that, in the exercise of their functions, may appear in the different requested documentation .

Nor would it prevent access to information about the professionals who may have been hired for the execution of the municipal works as well as that related to the professionals in charge of preparing the technical documentation that makes up the files, nor to that referring to the people owners of expropriated goods or rights. All this, without prejudice, to omit from the documents to which access is given, the personal data (DNI, addresses, telephones or others) that are not necessary for the fulfillment of the intended purpose.

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 physical persons holding urban and environmental licenses that may appear in the documentation claimed

Data protection regulations would not allow access to the personal data of third parties who could have intervened during the public information periods of the corresponding administrative procedures.

Barcelona, June 4, 2019

Machine Translated