

IAI 29/2019

Claim: 207/2019

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 municipal group against a City Council for the denial of access to information on the documentation presented by the municipal groups for the justification of the financial allocations received for the years 2017-2018

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 207/2019 presented by a municipal group against the City Council in relation with the denial of access to information on the documentation presented by the municipal groups for the justification of the financial allocations received for the years 2017-2018.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and having seen the report of the Legal Counsel, the following report is issued.

Background

- 1. According to the file, on March 19, 2019, the City Council communicated to the municipal group (...) the report unfavorable to the approval of the "justification of the financial allocations received by the municipal group (...) for the years 2017-2018", and requests the municipal group to provide additional information.**
- 2. On March 21, 2019, a councilor from the City Council, representing the municipal group, submitted a letter to the City Council requesting the same documentation, referring to the rest of the municipal groups, specifically:**
 - Invoice from the lessor with the calculation of the corresponding VAT and personal income tax - Receipt of payment by the lessee - Receipt of payment form 115. Retentions and income on account - Income or returns from the lease or the sublease of properties urban**
 - Proof of payment form 303. Self-assessed VAT**
 - Copy of the rental contract**
- 3. On April 1, 2019, the City Council sent a letter to the applicant in which it explained that the documentation provided by the municipal groups was at their disposal, "from the date of the call for the Ordinary Informative Commission for the month of March (specifically from March 7)" and that additional documentation is only required from municipal groups "in the event that the accreditation of any expenditure is missing, or if additional documentation is needed for carry out said accreditation, but, obviously, no requirement is made if the documentation presented is correct (...)."**

4. On April 6, 2019, the interested person filed a claim with the GAIP alleging that the City Council did not provide him with the requested information.

5. On April 16, 2019, the GAIP requested a report from the City Council in relation to the claim presented. The file contains a copy of the City Council's Report of May 13, 2019, according to which it considers that the claim should be dismissed.

6. On May 27, 2019, the GAIP requests this Authority to issue a report in relation to the claim submitted.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, 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

According to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), personal data is: "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; (art. 4.1 RGPD).

It is also necessary to take into account Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

Therefore, the processing of personal data (art. 4.2 RGPD) that may be contained in the information requested by a municipal group in relation to the justification of the financial allocations received by the municipal groups for the years 2017-2018, is subject to the principles and guarantees of the personal data protection regulations (RGPD).

According to article 86 of the RGPD:

"The personal data of official documents in the possession of some public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the Member States that apply them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

Law 19/2014, of December 29, 2014, on transparency, access to information and good governance (hereafter, LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1). The mentioned article 2.b) defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law".

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

According to the City Council's letter, addressed to the claimant group on April 1, 2019, the documentation presented by the municipal groups for the justification of the allocations received for the years 2017-2018, remained at the disposal of the claimant from the date of the call for the ordinary Information Commission (March 7, 2019).

Therefore, from the outset, given the information available, the person making the claim and the municipal group he represents would already have had access to the documentation provided by the different municipal groups, and contained in the corresponding files, processed by the City Council.

As explained by the City Council in its report dated May 13, 2019, issued at the request of the GAIP, the claimant requests access to certain documentation relating to the rest of the municipal groups, which coincides with that which the City Council would have requested the municipal group claiming on March 19, 2019, according to the file.

According to the City Council's report, the mayor's office would have required the municipal group (...), the provision of additional documentation in order to better substantiate the expenditure relating to the rental of premises, "since the invoices provided by this group "a priori" seemed irregular", according to the

The City Council's report adds that the rest of the files, with reference to the rest of the municipal groups, would have been validated to consider that the expenses relating to the rental of premises were correctly credited.

Regarding this, according to article 73.3 of Law 7/1985, of April 2, regulating local regime bases (LRBRL):

"3. For the purposes of their corporate action, the members of the local corporations will form political groups, in the form and with the rights and obligations that are established with the exception of those who are not part of the political group that constitutes the electoral formation by those who were elected or who leave their group of origin, who will be considered non-affiliated members.

The Plenary of the corporation, in charge of its annual budgets, may assign to political groups an economic endowment that must have a fixed component, identical for all groups and another variable, depending on the number of members of each one of them, within the limits that, as the case may be, are established with a general character in the General Budget Laws of the State and without which they can be allocated to the payment of personnel remuneration of any type in the service of the corporation or the acquisition of goods that can constitute fixed assets of a patrimonial nature.

The economic and political rights of non-affiliated members may not be superior to those that would have corresponded to them had they remained in the group of origin, and will be exercised in the manner determined by the organic regulations of each corporation.

This provision will not apply in the case of candidacies presented as an electoral coalition, when any of the political parties that make up it decide to abandon it.

The political groups must keep a specific accounting of the endowment referred to in the second paragraph of this section 3, which they will make available to the Plenary of the Corporation, whenever it requests it. (...)"

The LRBRL foresees that the Plenary of the corporation assigns to the political groups financial endowments that must contain a fixed component, identical for all groups and another variable, depending on the number of members of each of these groups, and within of the limits that may be established by the respective General Budget Laws of the State.

These endowments, the amount of which is to be set by the Plenary, cannot be allocated to the payment of personnel remuneration of any kind in the service of the Corporation, nor to the acquisition of assets that may constitute fixed assets of a patrimonial nature, and are object of a specific accounting that the municipal groups must make available to the Plenary, whenever it requests it.

In this context, according to the City Council's report, the documents to which the claimant requests access "have no reason to be recorded, in fact, they are not recorded, since each file contains the documentation that has been deemed necessary to provide for each municipal group, or the one required, if that was the case, by the processing body (the Mayor's Office)."

In relation to the information justifying the expenses of each municipal group, which would appear in the corresponding file, as the City Council would have informed the claimant in the letter dated April 1, 2019, "the mayor's department -who is responsible for the processing of these files- makes the appropriate requests to the municipal political groups in the event that the accreditation of any expenditure is missing, or if additional documentation is needed to carry out said accreditation, but obviously, it is not make no request if the documentation presented is correct and sufficiently substantiates the corresponding expenditure."

Given the information available, it seems clear that the City Council, in relation to the justification of expenses by municipal groups, does not necessarily always have the same documentation in relation to all groups, as this will depend on various factors (for example, it may be the case that a municipal group is not a tenant of any premises and that, therefore, it does not have to provide any documentation in this regard, or it may be that the City Council does not request certain documentation because you already have other information that allows you to adequately justify the expenditure).

It must be remembered that public information is "the information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions, including that supplied by other subjects obliged to "in accordance with the provisions of this law" (art. 2.b) LTC).

In the case at hand, and based on the information available, the City Council does not have the documentation that is the subject of the claimant's request for access and, consequently, it is clear that it cannot be attributed to the claimed documentation, which the City Council does not have, the qualification of public information, for the purposes of the transparency legislation.

Regarding this, as the same report from the City Council explains, "we cannot consider these documents requested by Mrs. (...), since following the definition of article 2.b) of LTBG, it is neither information prepared by the City Council, nor is it in its possession as a result of its activity or of the exercise of its functions, including that provided by the other obliged subjects in accordance with the provisions of the LTBG".

Therefore, given that the City Council does not have the required documentation and that this cannot be qualified as "public information" for the purposes of transparency legislation (art. 2.b) and 18 LTC), it is not applicable to the claim examined the regime of access to public information provided for in said legislation. In particular, the regime of access to information is not applicable to the case

personal that may be contained in public information, which regulates said regulations (arts. 23 and 24 LTC).

III

A different issue would be for the City Council to have the documentation that the municipal group claims (for example, in the event that the City Council requests an extension of the documentation provided by a municipal group). In this case it is clear that the documentation would be public information for the purposes of transparency legislation (art. 2.b) and art. 18 LTC) and, therefore, would be subject to the access regime provided for in the transparency legislation.

In this case, in accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information that contains personal data (if applicable, the documentation to which the municipal group's request refers), it will be necessary to assess whether the right to data protection of individuals affected would justify or not the limitation of the right of access to public information regulated in the LTC, invoked by the applicant.

Considering that the required documentation (tax and accounting information related to the rental of premises by municipal groups) could contain personal data, it will be necessary to take into account, in the event that the City Council has this documentation, the regime of access provided for in the transparency legislation and carry out, beforehand, a reasoned weighting of the public interest in the disclosure and the rights of the affected persons, taking into account, among others, the circumstances provided for in article 24.2 of LTC.

On this, we refer to the considerations made by this Authority, among others, in Reports IAI 46/2017, or Report IAI 1/2019, for its interest in the case raised.

Thus, as this Authority states in Report IAI 46/2017 (FJ V), the following should be taken into account:

"(...).

For the purposes of transparency, there does not seem to be any doubt as to the relevance it can have for the citizens and residents of the municipality, to have the information that allows them to know what the municipal groups are spending the funds they receive from the corporation's budget.

With this information the citizen could form a critical opinion about the destination that each of the different groups makes of the money coming from taxpayers. However, the question that needs to be raised is whether, in order to achieve the purpose of transparency, it is necessary to access the personal information that may be contained in the documentation to which it is intended to be accessed.

There is no information available on what personal data could be contained in the accounting records and the various supporting invoices. In general, and to the extent that the funds received by the political groups should be used for operating expenses, the range of expenses that could have been made with this money is wide. It can range from the purchase of office equipment, the rental of premises to carry out the group's activity, the organization of advertising campaigns, the hiring of advice

external professional, up to the payment of representation expenses (diet, travel, lunches, etc.).

This information could affect, on the one hand, third-party physical persons who may have been hired to perform a service (for example, if a professional had been hired for external advice), but on the other hand, also could provide information about the activity of specific councilors who are members of the group, depending on what information is contained in the justifications (e.g. lunch of a certain councilor with another person in a certain restaurant) or that, without the need to state their direct identification, can be related to a specific person (for example, in the case that the political group is made up of a single person, who as can be seen from the application submitted to the City Council, would be the case for two of the municipal groups).

For the purposes of transparency, and in general, it may be relevant to know the information on what the destination is, that is, in what and what part of the public endowment has been intended to cover material costs, rent of premises, or to cover advertising campaigns or representation expenses, or any other operating expenses of each of the groups. Knowing the different concepts of expenditure and their amounts would allow the citizen to verify that the endowments are allocated to operating expenses and not to other things, and to what extent they are carried out. With this, in principle the citizen could check the correct use of the public funds allocated to the groups and form a critical opinion on the various ways of proceeding from the different groups.

From the point of view of the third physical persons who may eventually be identified in the accounting documentation or in the respective invoices justifying the purchases or services paid for by the political groups, in principle, and in the absence of greater concreteness about the reasons for which access is of interest, it must be borne in mind that in principle it seems that this would be information linked to some professional activity (either as a result of providing supplies or the provision of services) so the intrusion into private life of these people would be minimal, but it cannot be ruled out that a continued relationship may end up allowing the identification of some type of link with certain people or suppliers which, taking into account the political nature of the municipal group, may end up allowing to establish, in a well-founded manner or not, some kind of political affinity.

On the other hand, it may seem like a case analogous to the exposure to which the administration's contractors are subjected, who, by mandate of the LTC are subject to a demanding regime of active advertising (art. 13 LTC), but it is necessary keep in mind that in this case it is not about controlling these third parties, but about controlling the destination of the funds. This being so, the goal of transparency would also be achieved without the need to identify and sacrifice the privacy of natural persons who may eventually appear in the set of affected documentation. By application of the principles of proportionality or minimization in the processing of data, it is considered that the eventual access to the requested documentation should not include information that allows them to be identified. It is worth remembering that anonymization should always be the first measure to take into account in the event of access to personal information affected by the exercise of citizens' right of access. It would be sufficient to provide information about the concep

With regard to the information that may affect the councilors who are members of the group, if the information is given without providing details of any representation expenses (meals, travel, accommodation incurred as part of the inherent activities of the political groups), the degree of interference on the privacy of the councilor would be much less and would certainly respect the principle of data minimization. However, in the event that it is a question of expenses that are recorded as imputable to the activity of a certain councilor, the data protection regulations would not prevent access to this information. From the point of view of the councilor who may be affected, it must be taken into account that these people hold public positions, have and use, with a wide margin of discretion, public money that should be intended to cover expenses of functioning of the group of which they are part, and therefore linked to the public purpose they pursue. The need to control this margin of discretion in relation to the use of public funds can justify access to this information."

conclusion

Given that the City Council does not have the documentation requested by the person making the claim, this documentation is not considered public information (art. 2.b) and art. 18 LTC) and, therefore, the transparency legislation does not apply, in particular, the regime of access to public information is not applicable to the claim (art. 23 and 24 LTC).

In the event that the City Council has the documents requested by the person making the claim, it will be necessary to take into account the considerations made in Legal Basis III of this report.

Barcelona, June 17, 2019