

Claim: 242/2019

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 Regional Council for the denial of access to information on public aid and subsidies granted to the political groups of the Regional Council.

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 242/2019 presented by a citizen against the Regional Council in relation to the denial of access to information on public aid and subsidies granted to the political groups of the County Council and the corresponding supporting documents made by the political groups in charge of the subsidies they receive from the local corporation.

After analyzing the request, which is accompanied by a copy of the administrative file processed before the GAIP, this Legal Counsel issues the following report:

Background

1. On January 30, 2019, a citizen submitted a letter to the County Council requesting:

"1. The public subsidies and adjustments granted by the County Council to the different Groups of the County Council, from the financial year 2011 to the financial year 2018, both inclusive, detailed by year, with an indication of the amounts and the beneficiaries .

2. The information relating to the financial control of the aforementioned subsidies or public aid granted to the Groups: reports of the intervention or of the secretary-municipal intervention; and where applicable, actions requiring the Groups to hold accounts, justify the application of the funds, or the annual repayment of unspent amounts, etc.

3. Copy of the invoices and/or other supporting documents for the application of the grants or aid granted, presented by the beneficiaries at the time of collection of accounts; and also a copy, where appropriate, of the documentation certifying the return to the coffers of the amounts received and not applied in each fiscal year."

2. On April 11, the interested party lodged a complaint with the GAIP alleging that the County Council had not provided him with the information and reiterated the request made before the County Council.

3. On April 25, 2019, the GAIP requests the County Council to give reasons for its position in relation to the access request submitted and to send it the complete file.

4. On May 30, 2019, the GAIP again requests from the Council a report and the file in relation to the claim presented. As well as notifying the affected groups of the request for access to information, in order to convey the considerations to the GAIP

that they deem appropriate. The file does not include a copy of the pleadings that the different affected groups may have submitted.

5. On May 30, 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 a 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).

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

Article 18 of Law 19/2014 establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (section 1).

The mentioned article 2.b) defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law".

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

The information related to the financial allocations received by the political groups in charge of the County Council's budgets is "public information", subject to the access regime provided for in the transparency legislation. However, in accordance with article 20 and s. of Law 19/2014, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information that contains personal data, it is necessary to assess whether or not the right to data protection of the affected persons would justify the limitation of the right of access to public information regulated in Law 1

III

The object of this claim is, as can be seen from the claim, the subsidies and public aid granted by the Regional Council to the different Groups of the Regional Council, from the year 2011 to the year 2018, both inclusive, detailed by years, amounts and beneficiaries. As well as information relating to financial control, retention of accounts and copies of invoices and other supporting documents for the application of grants or aid granted.

Article 73.3 of Law 7/1985, of April 2, regulating local regime bases (LRBRL) provides:

"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 determined by the Plenary, cannot be used for the payment of staff remuneration of any kind in the service of the Corporation, nor for the acquisition of goods that may constitute fixed assets of a patrimonial nature.

From here, within the information that is requested we can understand including on the one hand, each of the amounts that the Regional Council would have effectively paid to the different political groups in terms of adjustment or subsidies, and on the other hand the information on the destination that these groups would have given to the amounts received for these concepts including expressly the invoices or documents that would justify this destination, all this with respect to the period between the years 2011-2018.

In principle, due to the type of information requested, it does not seem that this may contain data of special categories, deserving of special protection.

Therefore, in order to give access to the same, a reasoned weighting of the public interest in disclosure and the rights of the affected persons will need to be carried out beforehand. To carry out this weighting, the circumstances provided for in article 24.2 of the LTC must be taken into account, among others, as follows:

"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. (...)"

IV

Before that, however, it must be noted that the person who submits the claim to the GAIP does so on behalf of a political group, but it is not clear from the file whether the political group has representation in the required County Council. Therefore, this report is issued on the understanding that the person claiming is requesting it in their capacity as a citizen.

This consideration has been made and with regard to the information requested on the identification of the beneficiaries, the destination and the amounts paid to each of the groups and that relating to the financial control of the referred subsidies or aid (points 1 and 2 of the previous 1) given that the assignment is made to the political group and not to the specific people who make it up (county councilors in this case), this information alone cannot be considered to be personal information.

Having said that, it is worth remembering the provisions regarding active advertising established by article 15 of the LTC for information on public subsidies and adjustments. According to this precept, subsidies and public aid must be published on the portal

granted with the indication of the amount, the object and the beneficiaries of the last five years, updated, the information relating to the financial control and the justification or withholding of accounts by the beneficiaries.

Thus, access to this information would allow the claimant to verify what the amounts paid to each of the groups would have been and whether these correspond to the financial allocations previously recognized by the Plenary of the Regional Council, information that could be relevant for the purposes of transparency in the control of the management of municipal public resources. In this case, it does not seem that there can be any inconvenience from the point of view of data protection regulations in the delivery of this information.

v

With regard to the rest of the information requested (point 3 of precedent 1), specifically "copy of the invoices and/or other supporting documents for the application of the subsidies or grants awarded", from from the point of view of the data protection regulations, it is necessary to analyze whether there would be any limitation to take into account with respect to personal information that could be affected by the eventual access to the accounting and supporting documentation that could eventually be provided by the different political groups in request of the Plenum of the County Council. Question that will need to be resolved by making a reasoned weighting between the different rights and interests.

The person making the claim justifies the reasons why they are interested in accessing the requested information, specifically, they state the following reasons: "Keep informed (...) neighbors and taxpayers (...) of the amounts that in concept of subsidies and aid have been granted by the Regional Council (...) to the different Groups and, especially, how to justify the application of these public funds which, in one way or another, have all compulsorily out of the pockets of the citizens of the region as taxpayers of taxes, fees, special contributions and other taxes (...)".

For the purposes of transparency, there does not seem to be any doubt about the relevance it can have for the citizens and residents of the municipality, to have the information that allows them to know what the groups are spending the funds they receive from the County Council'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 requested documentation, such as, for example, the various invoices or supporting documents. Now, in general, and to the extent that the funds received by the groups should be used for operating expenses, the range of expenses that could have been made with this money is very 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 external professional advice, to the payment of representation expenses (diet, travel , lunches, etc..).

Thus, this information, on the one hand, could provide information on the activity of the county councilors who are members of the group, depending on what information

stated in the justifications (e.g. lunch of a certain councilor with another person in a certain restaurant) or that, without the need for his direct identification to be stated there, can be related to a specific person (for example, in the case that the political group is formed by a single person). But on the other hand, it could also provide information on third-party natural persons who may have been hired to perform a service (for example, if a professional had been hired for external advice).

For the purposes of transparency, and in general, it may be relevant to know the information on what the destination is, that is, 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 make it possible to verify that the endowments are allocated to operating expenses and not to other things, and to what extent they are carried out. This, in principle, would make it possible to check the correct use of the public funds allocated to the groups and to form a critical opinion on the various ways of pro

With regard to the information that may affect the district councilors who are members of the group, 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. In addition, 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 with the privacy of the councilor would be much smaller and would certainly respect the principle of data minimization and would not preve

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.

Also, in the event that the natural persons who appear on the invoices or documents justifying the expenses are working persons in the service of the corporation, knowing their identity could be necessary for the purposes of controlling the destination of the funds received by the political groups, in terms of article 73.3 LRBRL. In this case, the data protection regulations would not be an impediment to giving access to the claimant to the invoice or supporting documentation.

VI

On the other hand, from the point of view of the third physical persons who may eventually be identified in the accounting documentation or in the respective invoices supporting the purchases or services paid for by the political groups, in principle, it must be taken into account that it would seem that this is information linked to some professional activity (whether as a result of providing supplies or the provision of services) so the intrusion into the private lives 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 connection with certain people or suppliers who, taking into account the political nature of the

municipal group may end up allowing some type of political affinity to be established, whether justified or not.

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 take into account that in this case what is involved is not controlling these third parties, but controlling the destination of the funds.

In this sense, the objective 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. Thus, by applying 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.

Thus, invoices and documentation relating to expenditure could be provided anonymously, as they are not relevant for the purpose of controlling the expenditure made by the municipal groups, but maintaining the specific reference to the concept and amount of the

VII

Finally, it should be remembered that, in accordance with the provisions of article 35.2 of Law 19/2014, "The right of access cannot be acquired by administrative silence if any of the limits established by this or other laws for have access to public information."

Taking into account that the information subject to the claim contains personal data and that therefore a legal limitation applies that must be dealt with by applying the criteria provided for in articles 23 and 24 of Law 19/2014, and that could entail a denial of access to the requested information, the right of access to the claimed information cannot be understood as acquired by administrative silence.

conclusion

The data protection regulations do not prevent the claimant from accessing information about the amounts paid by the County Council to the different political groups. Nor would it prevent access to information on the different types of expenditure incurred by these groups and the amounts allocated to each of them, including the fact that some of these expenditure may be linked to a specific county councillor.

Beyond this, given the information that is available, from the perspective of data protection (principle of minimization) it does not seem justified, general access to the personal data of third natural persons other than county councilors or of working people in the service of the county council, who appear on the invoices, for the purposes of controlling the destination of the funds received by the municipal groups.

Barcelona, June 6, 2019