

Ref. : IAI 312019

Claim: 208/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim presented by a citizen against a town hall for the denial of access to the details and justification of expenses corresponding to various items of the municipal budget.

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 208/2019 presented by a citizen against a city council for the denial of 'access to detail and justification of expenses corresponding to various items of the municipal budget.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the report of the Legal Counsel, I issue the following report:

#### Background

1. On December 11, 2018, a citizen requests a copy of the 2018 budget, and if extended also the 2017 budget, as well as the details of all current expenses broken down by invoice, and the person who authorize the payment. Also request details of the items "personnel expenses" and "current transfers", with copies of the invoices or tickets.
2. On April 5, 2019, the interested party's claim against the City Council, due to the lack of response to their request, was received by the GAIP.
4. On May 31, 2019, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

#### Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan 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 data protection

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, suppression or destruction."

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency). In accordance with article 6.1 of the RGPD, in order to carry out a treatment, it is necessary to have a legal basis that legitimizes this treatment, either the consent of the affected person, or any of the other circumstances, such as "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c).

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

At the same time, article 86 of the RGPD provides that "the personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

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

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

The second additional provision of the LOPDGDD, states that "Active advertising and access to public information are regulated by Title I of Law 19/2013, of December 9, on transparency, access to public information and good governance, as well as the active advertising obligations established by regional legislation, will be subject, when the information contains personal data, to the provisions of articles 5.3 and 15 of Law 19/2013, in Regulation (EU) 2016/679 and in this organic law."

Article 18 of Law 19/2014 establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (section 1). The mentioned article 2.b) defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law".

The object of the claim is access to the municipal budget for the year 2018 (or 2017 if it was extended), and to the details of certain current expenses made in application thereof.

Specifically, the claimant requests the following information:

- Details of all current expenses broken down by invoice, as well as the identity of the person who authorized the payment.

We understand that you are referring to current expenditure on goods and services in Chapter II of the expenditure budget. Access to said information could affect the natural persons suppliers or providers of the different contracted services.

- Detail of the personnel expenditure item referred to in Chapter I of the expenditure budget and which includes the remuneration of City Council staff, the mandatory social security contributions as well as social benefits for workers municipal

Access to said information could affect employees or public officials of the corporation.

- Detail of the current transfers referred to in Chapter IV of the expenditure budget, which includes the contributions of the local body without financial consideration, such as aid and subsidies.
- The claimant requests a copy of the invoices or tickets. Access to said information could affect the natural persons who are beneficiaries.

The information and/documentation claimed 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). In accordance with article 20 and s. of the LTC, this right may 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

### III

With regard to access to the current municipal budget in 2018, it should be borne in mind that article 11.1.a) of the LTC obliges the City Council to make public, in application of the principle of transparency, the budget, with the description of the annual budget items, and the data on their execution - so that the degree of execution can be known on a quarterly basis - and their liquidation, and the fulfillment of the objectives of budgetary stability and financial sustainability .

The general budget contains, according to article 167 of Royal Legislative Decree 2/2004, of March 5, which approves the revised text of the Local Finance Regulatory Law (TRLRHL), for each of the budgets that it is made up of the statement of expenses, in which are included, with due specification, the credits necessary to fulfill the obligations, and the statements of income in which the estimates of the different resources to be liquidated during the exercise

Article 169 of Royal Legislative Decree 2/2004, of March 5, approving the Revised Text of the Local Finance Regulatory Law (TRLRHL), enshrines the principle of publicity in budgetary matters, by providing for the publication in the respective official bulletin, of the general budget

defined summarized by chapters (section 3), and requires that a copy of the budget and its modifications be available to the public, for informational purposes, from its final approval until the end of the financial year (section 4).

A priori, it does not seem that the information contained in a budget can affect personal data. However, it cannot be ruled out that there may be a case in which the information provided may end up being linked to a specific natural person.

This could occur, for example, in the event that the remuneration of a single elected or managerial position of the corporation is entered in the item of personnel expenses, or in the event that in the item of current transfers an grant in the name of a specific natural person. In both cases, however, this is information that should be available to citizens, in view of the provisions for active advertising in terms of remuneration and subsidies contained in articles 11.1.b) and 15.1 of the LTC, to which we will refer below when analyzing the claimant's access to the details of the different items of current expenses requested.

Taking into account the regulatory provisions in budgetary matters, there must be no impediment, from the point of view of the right to data protection, in facilitating the claimant's access to the requested municipal budget.

Access to the details of the different items of current expenses requested, could affect, as has been pointed out, personal data of an occupational and/or economic nature of different groups of people.

However, it cannot be ruled out that within the requested information there may be data considered to be specially protected for the purposes of article 23 of the LTC. Specifically and with regard to the detail of expenses related to the granting of subsidies and aid included in Chapter IV of current transfers that has been requested, there could be, for example, some type of subsidy intended for people who suffer from a certain illness

In these cases or in any other case in which the information may be related to personal data deserving of special protection, and in the absence of express consent of the affected persons, it will be necessary to limit access in anticipation of what is established in this pre

Beyond the specially protected data referred to in article 23 of the LTC, access to personal information that may contain the requested information and/or documentation requires a prior weighing between the different rights and interests at stake , in attention to article 24.2 LTC: ".. access to information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. 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. (...).”

Order EHA/3565/2008, of December 3, which approves the structure of the budgets of local entities, regulates in Annex III, the economic classification codes of current operations, specifying the expenses applicable to each chapter, article and economic concept, and breaking down these concepts into sub-concepts and items, as appropriate for the management of the programs in charge of the local body.

Taking into account the different nature of the expenses included in each of the chapters affected by access, we will analyze below what type of personal information may be affected.

#### IV

With regard to the detail of the "personnel expenses" item of Chapter I of the budget for current expenses, requested by the claimant, and in accordance with the provisions of Order EHA/3565/2008 it is foreseeable that in this include:

- All types of fixed and variable remuneration and compensation in money and in kind, to be paid by the local entities and their autonomous bodies to the staff who provide services in these entities.
- The mandatory contributions of these entities to Social Security.
- Social benefits (pensions and remunerations to be granted due to burdens relatives)
- Expenses of a social nature made in compliance with agreements and provisions in force

Staff remuneration is broken down by distinguishing between elected positions (Mayor and councillors) and managerial staff (Article 10), casual staff (Article 11), official staff (Article 12), labor staff (Article 13) and other staff hired to carry out tasks (article 14).

In this case, the level of detail with which the different concepts are broken down (basic remuneration, complementary and/or contributions to pension plans) or the productivity supplement referred to in article 15 in a global way for everything is unknown the staff, but in principle taking into account the detail contained in Order EHA/3565/2008, the amounts allocated to each of these concepts do not reflect individualized information that may relate to a specific person.

Thus, for example, within the concept of basic remuneration and other remuneration of members of the government (Mayor and councillors) it is likely that the amount of the set of remunerations to be met for this concept will be included. The same would happen with regard to managerial staff or casual staff.

Certainly, there may be some case in which the amount of remuneration that is recorded may refer only to a specific person, and if so, it is likely, as pointed out in the previous rationale, that it will be relatively easy to identify- the through indirect ways.

Now, taking into account that article 11.1.b) of the LTC obliges the Administration to publish the remuneration received by the senior positions of the Public Administration individually for each job and for any remuneration concept, compensation or allowance, it does not seem that there could be any inconvenience in the claimant being able to access said information regarding those in high positions. In the local administration and for the purposes of what is established by law, they are considered high-ranking officials in the service of the local administration, "local representatives and the holders of superior and managerial bodies, in accordance with what is established by the legislation of local regime". (article 4.2.b) of the LTC).

In line with the criteria maintained by this Authority in relation to access to remuneration information, the considerations that have just been made regarding requests for access to remuneration information that affect managerial staff can be made extensive to personnel who occupy positions of special trust, of special responsibility within the organization or at a high level in the structure of the corporation, of free appointment, or that involve a high level of remuneration.

Although the law does not expressly provide for the publication on the transparency portal of the remuneration of this type of public employee, access to this information contributes to a better knowledge of the criteria of organization and operation with respect to those positions work that, due to its uniqueness within the organization and due to the level of remuneration usually associated with it, justify a public interest overriding the right to data protection of the persons affected.

Consequently, in the event that with the detail of the personnel expense item it is possible to relate the remuneration information to any of these people, the transparency legislation would enable the claimant's access to said information, notwithstanding any circumstances that may arise specific personal alleged by the affected person in the hearing procedure provided for in article 31 of the LTC that justifies limiting access.

With regard to the remuneration information for the rest of the workers, article 12 of Order EHA/ 3565/2008 referring to civil servants, distinguishes between the different remuneration concepts, and only foresees the possibility of dividing wages based on different official groups. The rest of basic remuneration (triennial, and others that can be assigned to staff), and complementary remuneration (destination supplement, or specific) or in kind, is accounted for globally. Regarding labor personnel, article 13 does not make any distinction beyond the division between permanent and temporary personnel and the different remuneration concepts.

Thus, in view of the economic classification provided for in the Order, it does not seem that the detail of the requested information can go beyond the forecasts of active advertising already contained in article 11.1.e) of the LTC, according to which it is necessary to publish the " general information on the remunerations, compensations and per diems received by public employees, grouped according to levels and bodies".

In any case, the evaluation of the use of public resources can be done by having the information on remuneration grouped by category or according to the different types of workplace, and therefore, it does not seem that it can be justified for the purposes of of transparency access to staff remuneration that goes beyond what is already provided for in the same transparency law.

v

Regarding the access to the detail of current expenses broken down by invoices requested by the claimant, it should be noted that in accordance with Order EHA/3565/2008, within Chapter II of current expenses in goods and services , including leases and royalties (article 20), repairs, maintenance and conservation (article 21), material, supply and other miscellaneous expenses (article 22).

In addition to these expenses, article 23 of Order EHA/3565/2008 includes in this chapter, the compensations to recover the expenses derived from the service commissions to the members of the government, civil servants, labor personnel, contingent and contracted , distinguishing between per diems and travel expenses of members of the government, management staff and non-managen

Starting with the current operating expenses referred to in the aforementioned articles 20, 21, and 22, it should be noted that in matters of contracting, article 13.1.d) of the LTC obliges the Administration to publish "d) The contracts signed, with the indication of the object, the tender and award amount, 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 contracting 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.

This precept would enable access by citizens to the identity of the successful bidder, the object of the contract and the amount of the tender and award, among other data, and therefore, it must not have inconvenience in facilitating the claimant's access to said information.

In accordance with the additional provision 32a of Law 9/2017, of November 8, on public sector contracts, by which Directives of the European Parliament and of the Council 2014/23/EU are transposed into the Spanish legal system and 2014/24/EU, of February 26, 2014 (hereinafter, LCSP): "1. The contractor will have the obligation to submit the invoice issued for the services rendered or goods delivered to the corresponding administrative register for the purposes of its referral to the administrative body or unit responsible for processing it."

With respect to minor supply or service contracts (these are those with an estimated value of less than 15,000 euros) the processing of the file only requires the justification of the necessity of the contract, of the non-use of it to avoid the application of the general rules of contracting and that he has not entered into contracts with this contractor for an amount higher than that provided for in the regulations; the approval of the expenditure and the incorporation of the corresponding invoice (article 118 LCSP). In this case, the invoice can be the document certifying the contract itself.

The claimant's access to detailed information about the successful tenderer (issuer of the invoice), the object and the invoiced price would not imply a greater interference in the privacy of the contracted supplier or service provider than that already provided for by law of transparency in matters of recruitment. This is information with a direct impact on public resources, and may be relevant for the purposes of evaluating the management of the City Council when executing the budget pr



expenses, and therefore, there should be no inconvenience from the perspective of data protection in providing the requested information.

Be warned, however, that the principle of data minimization (Article 5.1 c) RGPD) requires that the data processed be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In application of this principle and beyond facilitating the list with the name and surname of the successful bidder, the object and the invoiced amount, any other identification data (such as the ID number) unnecessary to achieve the purpose should be omitted of pursued transparency.

With regard to access to the details of the information on allowances and/or allowances broken down by invoices, to the extent that said information can be related to the position or public employee who received them, it is personal information, in this case of economic or occupational type to which the work activity of the affected person would be linked. The degree of impact on the right to the protection of personal data that the claimant's access to the requested information may entail will depend on the degree of detail in which it is provided.

The transparency regulations already provide, as we have seen in the previous foundation, for citizens to have access to information on the amounts received by high-ranking officials of the administration in terms of per diems and compensations (article 11.1.b) of the LTC . For the rest of the staff, this information must be published grouping it by groups, bodies or professional categories (article 11.1.c) of the LTC.

Taking this into account, it does not seem that there could be any inconvenience in providing the claimant with the breakdown of the amounts paid to the members of the government and the management staff in terms of per diems or locomotion, the reason (day, committee, event or meeting at which the person attends) that justifies the payment of the diet, compensation or actual expense incurred, and even the concept of the expense (accommodation, maintenance or locomotion). This information could even be provided on an individual basis. This is information that may be relevant to the effects that the claimant can assess and form a critical opinion in relation to the evaluation of the efficiency in the management of public resources.

Access to more detailed information on the invoice amounts (for example, on the place where the meal was held or on the accommodation, etc.) would mean a high level of interference in the privacy of the people affected who it would not be justified for the purposes of achieving the purpose of control in the matter of execution of budgetary expenditure that the claimant seems to be pursuing by requesting generalized access to all types of expenditure inherent in the ordinary

In the event that the per diems and compensations refer to non-managerial staff, and given that the same Transparency Law provides that the publication of the amounts received is grouped by levels or bodies (11.1.e) LTC), the breakdown requested it had to be facilitated without being able to individualize the expenditure on a specific worker.

## VI

With regard to the detail of expenses in current transfers requested by the claimant, it should be noted that in chapter IV of the economic classification of the expenditure budget, they are included

credits for contributions by the local entity or its autonomous bodies, without direct counterparty from the receiving agents, and with the aim of financing current operations.

Also included are subsidies in kind of a current nature, referring to goods or services acquired by the local entity for delivery to the beneficiaries as a subsidy granted.

Apart from the various contributions to other administrations or public or private entities provided for in articles 40 to 47 of Order EHA/3565/2008, in article 48 transfers for current expenses related to charitable and welfare care are included, prizes, study and research grants, grants in favor of foundations, institutions, charitable or sporting entities and political groups of the local entity.

In the field of subsidized activity, article 15 of the LTC establishes that "1. The information relating to subsidies and public aid that the obliged entities must make public in application of the principle of transparency must include: a) An updated list of subsidies, and other aid that the obliged entities plan to call during, the budget exercise, with the indication of the object or purpose and the description of the conditions for being a beneficiary. (...) c.) Subsidies and public aid granted, with indication of the amount, the object and the beneficiaries. This information must include grants and aid, must be up-to-date and must refer to the last five years. It must also include subsidies and grants awarded without advertising and competition if these requirements have been exempted, in the cases established by law. In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved"

The LTC foresees the publication of the awarding of subsidies and public aid as long as the identity of the beneficiaries of those subsidies and public aid granted for reasons of social vulnerability is preserved. This would be the case, for example, of aid to families to cover the fees of the municipal nursery school with the aim of freeing the most vulnerable families in the municipality and guaranteeing access to education for minor children of 3 years as well as equal op

Therefore, there should be no inconvenience in facilitating the claimant's access to the details (object, amount and beneficiary) of the subsidies and aid granted under this budget expenditure chapter, except in cases where it is people who are in situations of social vulnerability, assuming that access to identity should be avoided.

The claimant also shows an interest in being provided with a copy of the invoices or tickets, documents that would justify the provision of the subsidized service.

Make it clear that there is certain information relating to the justification of the subsidies granted by the City Council which, to the extent that it must be public, must also be known by the person making the claim. In this sense, article 15.1.e) of the LTC establishes the obligation to publish "the justification or withholding of accounts by the beneficiaries of the subsidy or aid granted".

This provision, however, should not be understood as a general authorization to publish each and every one of the documents provided by the beneficiaries of a certain grant or public aid, which may contain information of various kinds, including personal data, up to and including everything, of a sensitive nature or deserving of special protection.

For these purposes, it could be sufficient to publish the inspection report resulting from the internal control or review of the supporting documentation provided by the entities or persons benefiting from the subsidy carried out by the local body in order to proceed with the payment of the subsidy or, where applicable, the revocation thereof.

The claimant does not justify the reasons why he is interested in obtaining said information, and this request is included in a request for generalized access to the supporting information for the various current expenses made during the budget year. In this context of generalized access, and in order for citizens to be able to evaluate the management carried out by the City Council in relation to the execution of the current expenditure budget, it should be sufficient to have the audit report resulting from the internal control or review of said supporting documentation, and it does not seem that indiscriminate access to personal information that may be contained in the requested supporting documentation can be justified.

## CONCLUSION

The data protection regulations would not prevent the claimant's access to the remuneration, compensation and per diems received by the elected officials of the corporation and other managerial positions, as well as the people who occupy positions of special trust, of special responsibility within the organization or at a high level in the corporate structure. Access to the remuneration information of the rest of the staff will have to be facilitated in an aggregated manner.

The data protection regulations would also not prevent access to the details of current expenses broken down by invoices, nor to the details of current transfer expenses (concept, amount and beneficiary person) unless it is subsidies granted for reasons of social vulnerability, or that are related to special categories of data, in which it will be necessary to limit access to the identity of the beneficiary.

On the other hand, the claimant's access to the documents justifying the subsidies would not be justified for the purposes of achieving the purpose of transparency. Delivery of the intervention report issued prior to payment would be sufficient.

Barcelona, July 2, 2019