

Ref.: IAI 36/2019

Claim: 263/2019

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public notice on the claim presented against the refusal by a city council of the request for the report of a municipal nursery school for the years 2015, 2016, 2017 and 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 263/2019, submitted in relation to the denial of access in memory of a municipal nursery school from the years 2015, 2016, 2017 and 2018.

Having analyzed the request, which is accompanied by a copy of the file of the claim submitted, this Legal Advice issues the following report:

Background

1. On April 20, 2019, a citizen submitted a letter to a town hall requesting the Ballmanetes Kindergarten Reports for the years 2015, 2016, 2017 and 2018.
2. On April 24, 2019, the interested party filed a complaint with the GAIP alleging that he had not received a response from the City Council and had not been given the information. In this letter, the claimant reiterates his request.
3. On April 30, 2019, the GAIP requests the City Council for a report in relation to the claim presented.
4. On June 20, 2019, the GAIP sent this Authority the file relating to the claim (which includes a copy of the reports provided by the municipal nursery school) and requested 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

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), defines personal data as "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; "

In accordance with the definition of treatment in article 4.2 of the RGPD "consultation, use, communication by transmission, dissemination or any other form of enabling access, access or interconnection, limitation, deletion or destruction" of personal data, are data treatments subject to the principles and guarantees of the RGPD. Therefore, the communication of personal data by the City Council, as a result of the request made by the person now claiming, is data processing under the terms of the RGPD.

The RGPD provides that all processing of personal data must be lawful, loyal and transparent in relation to the interested party (Article 5.1.a)) and, in this sense, establishes a system of legitimizing the processing of data which is based on the need for one of the legal bases established in its article 6.1 to apply. Specifically, sections c) and e) of article 6.1 of the RGPD provide respectively, that the treatment will be lawful if "it is necessary for the fulfill

a legal obligation applicable to the person responsible for the treatment”, or if “it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment”.

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

At the same time, article 86 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 of 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.”

In view of this, Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC hereafter) aims, among others, to "regulate and guarantee the right of access of people to public information and documentation" (art. 1.1.b).

Specifically, article 18 of the LTC 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 legally 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 information available to the City Council regarding the Municipal Preschool Records is "public information" for the purposes of the LTC and would remain subject to the access regime provided for in these regulations. Consequently, from the point of view of the right to the protection of personal data, the communication of this information that contains personal data can be considered a lawful treatment covered by letter c) of article 6.1 of the RGD, always that it complies with the transparency legislation and the rest of the principles and guarantees of the RGD.

III

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, it is necessary to assess, in application of the regime provided for in articles 23 and 24 of the LTC, whether or not the right to data protection of the affected persons would justify the limitation of the right of access to the information subject of the request.

Article 23 states that requests for access to public information must be denied if the information to which access is sought contains "specially protected data, such as those relating to ideology, trade union affiliation, the religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not involve

public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request".

And article 24 establishes that:

"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 except exceptionally, in the case concrete, the protection of personal data or other constitutionally protected rights should prevail.

2. 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 rights of the affected people. 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 the case we are dealing with, the information that is the subject of the claim is the Report of the municipal nursery school for the years 2015, 2016, 2017 and 2018.

The file sent by the GAIP contains the text of the reports relating to the 2015-2016, 2016-2107 and 2017-2018 academic years (it should be noted that the year that appears in the title of the reports regarding the year stated in the footer of the various documents, we understand that as a result of an error in updating the documents). The analysis of this documentation shows that they contain personal data of a different nature, access to which will need to be analyzed under the protection of the aforementioned articles of the LTC.

First, with regard to students, the reports include information on the total number of students in the nursery school, as well as the partial number grouped according to the group and class assigned. Likewise, the reports include quadrants with information on the number of students who have joined or who have dropped out during the course, identifying the date, the class to which it has affected and the reason for the drop-out (mother's work, socialization...) and leave (illness, lack of adaptation, poor attendance, relocation); as well as a quadrant relating to the number of children with special educational needs, with information on the group, the class, the type of disability and the need for external support.

The number of students would not, in principle, be personal data, but in accordance with the concept of personal data of the RGPD, "all information about an identified or identifiable natural person (...) will be considered an identifiable natural person any person whose identity can be determined, directly or indirectly, in particular through (...) one or several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person",

provide the number of students along with other data relating to their situation in an environment such as that of women in the case of the query (a municipality with a single municipal kindergarten and with a small group of students per classroom) could make the children to whom that data refers identifiable without disproportionate efforts.

In this sense recital 26 of the RGPD states that: "The principles of data protection apply to all information relating to an identified or identifiable natural person (...) To determine whether a person is identifiable it is necessary to have taking into account all the means that can reasonably be used by the data controller or any other person to directly or indirectly identify the natural person, such as for example singularization(...).

In addition, although recital 26 of the RGPD states that "(...)data protection principles do not apply to anonymous information, personal data that have been insufficiently anonymized, encrypted or presented with a pseudonym, but which can allow a person to be re-identified, remain personal data and are included in the scope of application of the RGPD. The decision on whether the data allows the identification of a person and whether the information can be considered as anonymous or not, depends on the specific circumstances of each case

Thus, as has been explained, in the case of the information on the number of children who have been registered or withdrawn during the school year, in addition to the number of children, the information on the classroom it affects and the reasons on which it is based (for example, one of the reports records, among others, a leave due to illness of a child in a class with a total of 8 children).

In the same way as it happens in relation to the information on the number of students with special educational needs. In one of the reports, the existence of a child with special educational needs is recorded, indicating as a type of disability a disease related to growth and belonging to a class, which according to the information in the quadrant relating to "groups of age and number of children" has very few students.

In both cases it can be concluded that with the information provided in the environment to which it refers, the minors who hold the data could be identified without disproportionate effort.

It must be taken into consideration, on the one hand, that the holders of the data are minors, and that as such, by application of the legal principle of the best interests of the minor, they deserve special protection.

And, on the other hand, the nature of the data recorded in the report relating to the situation of these minors, which (as in the case of minors with special educational needs), are considered specially protected data in terms of article 23 of the LTC.

Those responsible for preparing the reports could have presented the information in another format that, without distorting the purposes of this type of document, would avoid the risks of re-identification. Having not done so, in order to give the claimant access to the requested documentation, it will be necessary to omit the information relating to the reasons for the admissions and discharges of the minors as well as that relating to the type of disability that motivates the special educational needs, for risks of re-identification that it entails despite the fact that the names and surnames of the affected students are not included.

IV

The reports that are the subject of the complaint also contain the names and surnames of the people who make up the educational team of the nursery, of the monitors responsible for the dining room service and of the trainees.

With regard to the name and surname of the staff in the service of a public administration, article 24.1 of the LTC foresees that it is necessary to give access to the identifying data related to the organization, operation or public activity of the body unless some special circumstance requires the protection of the persons concerned.

As this Authority has previously highlighted, among others in the IAI 29/2018 report that can be consulted on the website www.apdcat.cat, the data relating to the first and last names, personal data identifiers directly related to the organisation, operation or public activity of the body.

In this sense, it can be concluded that the right to data protection would not prevent access to the identification data of the workers who make up the educational team of the kindergarten as well as the people who work as managers of the dining room service, as long as the hearing procedure provided for in article 31.1 of the LTC has been given and this procedure does not result in any reason that could justify the denial of access.

Therefore, it would be necessary to give the people affected the allegation procedure provided for in article 31.1 of the LTC, so that it can be known if there is a specific personal circumstance that justifies the limitation of the right of access. The identification data of these should not be provided when the access affects employees who are in a situation that requires special protection (for example being a victim of gender violence, etc.) that may be affected by the disclosure of information related to the workplace they occupy.

V

The reports also contain information on resignations and resignations from the educational team. This section of the report includes the name of the person from the educational team who caused the termination, the dates of termination and discharge, the reason and other observations.

The art. 4.15 of the RGD defines health data as "personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about their state of health." The art. 9.1 RGD includes health data in the special category of data and prohibits its treatment, unless one of the circumstances provided for in section 2 occurs.

Article 23 of the LTC provides: "requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, the union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that

do not entail a public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request."

From the perspective of transparency regulations, access to health data or others that may reveal information considered to be particularly protected, in accordance with Article 23 of the LTC, must be denied, unless there is of the express and written consent of the persons affected (supposition provided for in article 9.2.a) RGPD).

Consequently, it will not be possible to give access to the information on the terminations and terminations of the educational team when the reasons for the termination are issues related to the health of the municipal employee (for example maternity leave, etc.) or other circumstances considered to be particularly protected.

In the rest of the cases, when the stated reason for termination is based on other circumstances (termination of contract, etc.), it will be necessary to apply article 24.2 of the LTC according to which "If it is another information that contains personal data not included in article 23 can be given access to the information, with the previous reasoned weighting of the public interest in the 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. (...)"

Although in accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, the fact that the applicant expresses what is the purpose he pursues and, in short, the reasons for which it is interesting to know the information, adds a very important element to be taken into account to determine whether access can be granted, since the purpose, in accordance with article 2 LTC, is one of the weighting elements between the public interest in the disclosure of information and the right of the people affected.

In the case we are dealing with, it is not known that the applicant has stated a specific purpose for access.

Generally speaking, the purpose of the transparency legislation is "to establish a system of relations between people and the public administration and the other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and responsibility in public management" (Article 1.2 LTC).

The sacrifice of the privacy of the people who provide their services in the children's home in terms of revealing the reasons that have led to the termination of their employment relationship does not seem justified in the case at hand, since that the general objectives of the transparency legislation relating to the knowledge of public activity and the control of administrative management, would be achieved in the same way by providing the name of the people who have caused termination without indicating

VI

Another section of the reports includes the first and last names of the people who do internships at the center with an indication of the high school or university where they study, the assigned educator and the schedule.

With respect to access to this information, a reasoned weighting must be carried out between the right to privacy of the persons to whom the information refers and the right of access to the information of the person making the claim, in accordance with the weighting criteria provided for in article 2

As has been explained, the claimant does not state in his request what are the reasons for the access. It can be assumed that, in accordance with the general objectives of the LTC, the applicant wants to control the operation of the municipal nursery school. For these purposes, (as opposed to the identification of the personnel who provide services) make known the names and surnames of the people in practice, who are students and who, in principle, have no responsibility regarding the operation of the school cradle, would not provide any element that would allow this control to be effective.

Consequently, it is considered that the identification with the name and surname of the people in practice as well as the schedule that these people carry out are considered unnecessary in relation to the purpose of transparency pursued and must be omitted from the documentation only tendered

VII

The reports contain information about the canteen service hours with an indication of the hours of the responsible monitors and the total number of weekly hours worked by each of them. And, likewise, the teaching schedule indicating the name of each teacher, the details of their morning and afternoon schedule, as well as the hours they allocate to each of the tasks assigned to them (square of hours of work tasks).

With respect to access to this information, a reasoned balance must be made between the right to privacy of the persons to whom the information refers and the right of access to the information of the person making the claim, in accordance with article 24.2 of LTC.

It must be taken into consideration that the RLT is the technical instrument through which the organization of all workplaces in a certain organization is carried out, regardless of the specific person who occupies a workplace, and must include the essential characteristics of the jobs as well as the dedication regime (if it is full-time or another type of reduced day).

The RLT is public, as is clear both from the Basic Statute of the Public Employee (EBEP), approved by Law 5/2015, of October 30, and from the recasting in a single text of the legal texts in force a

Catalonia in matters of public service, approved by Legislative Decree 1/1997, of 31 October, and of the same legislation on transparency (art. 9.1.d) of Law 19/2014).

To the extent that the information contained in the RLT must be public because current legislation imposes it, there would be no obstacle, from the point of view of the right to data protection, to be able to deliver the information contained therein to anyone citizen

However, the RLT does not identify the specific people who occupy each job, and in the case we are dealing with in the report, the schedules are indicated together with the names of the people who perform them.

Nor does it escape this Authority that in a small City Council and with respect to a workforce, that of the Municipal Nursery School, in which there are only 13 people (2 of which are canteen monitors and with a part-time job, and, of the 5 educators, 2 have a working day of 78.60%, according to the published RLT) the knowledge of the information published in the RLT can allow anyone to end up relating this information to the specific people who occupy each job , as an inevitable consequence of the advertising regime provided for by law for RLTs.

In accordance with these considerations, with regard to the timetable of teaching staff and dining room monitors, there would be no problem in communicating the information that coincides with that contained in the published RLT (part-time, full-time, a percentage of the day, etc.) however, the specification of the entry and exit times of these, as well as the distribution schedule of the tasks (with the notes contained in the footer of the page) with regard to the teaching staff, contained in the reports, is considered excessive and unnecessary in relation to the purposes of the transparency regulations.

VIII

Finally, the reports contain the name and surname data of the people who make up the board of directors of the school's parents' association (AMPA), with the identification of their position within it.

It must be taken into consideration that AMPAs are legal entities with their own legal personality regulated by Decree 202/1987, of 19 May, which regulates associations of parents of students, article 6 of which provides for their registration in the registry of legal entities of the Generalitat.

Law 4/2008, of April 24, of the third book of the Civil Code of Catalonia, relating to legal persons (articles 315-1 to 315-8) regulates the Register of Legal Persons, which is managed by the Department of Justice of the Generalitat through the General Directorate of Law and Legal Entities and to which all associations subject to Catalan civil law must be registered for publicity purposes (articles 315-1.2 and 321-5).

The governing board or board of directors is the governing body of the association that administers and represents the association, in accordance with the law, the statutes and the agreements adopted by the general assembly (article 332-1 of the Law 4/2008).

The composition of the Governing Board and its modifications must be communicated to the Registry of Legal Entities.

Regarding the dissemination and access to certain information of legal entities, this Authority has issued opinion CNS 29/2019, which can be consulted on the page www.apdcat.cat, in which it is concluded that "it could be admitted the possibility of making accessible through the Guide of Legal Entities, as well as its dissemination in open data, certain information regarding the people who hold positions in the governing bodies or who have been founders of the entities registered in the Register of "Legal Entities".

To the extent that the information relating to the people who make up the board of directors of the AMPA and the positions they hold, must be communicated to the Register of Legal Entities for publicity purposes, taking into account, in addition, that the legal limitations to the right of access to public information must be applied in accordance with their purpose, taking into account the circumstances of each specific case, and must always be interpreted restrictively in favor of this right (article 20.2 LTC), access by the person requesting the information containing the name and surname and position of the members of the AMPA board of directors should take precedence over the right to data protection those.

IX

One of the sections of the report collects information about the maintenance works and the industrialist who carried them out.

With regard to the information relating to the awardees of the administrative contracts, there must be no inconvenience in facilitating access to information on the identity of any of the people who have been awarded the respective contracts, as he put manifest this Authority previously in the IAI report 23/2017, which is transcribed:

"In matters of administrative contracting, article 13.1. of the LTC obliges the Administration to publish: "b) Information on tenders in process, which must include at least the type of contract, its object, the economic content, the administrative clauses and the conditions of execution (...) 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 bidders, 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. e) Contractual modifications, contract extensions, canceled tenders and early resolutions".

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 awarding, 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 about 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 about the modifications or extensions granted."

Conclusions

The right to data protection does not prevent the person making the claim from providing information on the names and surnames of the people who make up the educational team of the nursery, of the monitors responsible for the dining room service, as well as of the people who are part of the board of directors of the AMPA who appear in the reports of the Municipal Nursery School that is the subject of the claim.

Regarding the number of students who joined or who dropped out during the course and the number of children with special educational needs, although the reports do not identify the students by name and surname, it will be necessary also omit the information relating to the reasons for the discharge and discharge; as well as information on the type of disability given the risk of re-identification.

With regard to the information on terminations and terminations of the educational team, it would be sufficient, from the point of view of the data protection regulations and to achieve the purposes of the transparency legislation, to provide the information relating to the names of the people without indicating the reason for the termination. In the same sense, it would be necessary to omit the specific information about the schedule of each worker, the personal schedules for the distribution of tasks, as well as the names and schedules of the trainees.

The data protection regulations do not prevent the release of information about the identity of the persons (natural or legal) awarded the maintenance works of the nursery school.

Barcelona, July 19, 2019