

IAI 37/2019

Claim: 248/2019

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 submitted by a citizen against a professional College for the denial of access to information on the proceedings of the Electoral Board of the June 2018 elections

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 248/2019 presented by a citizen, member, in relation with the denial of access to information on the proceedings of the Electoral Board, in relation to the June 2018 elections, which would have been held at the College (...).

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. On February 27, 2019, the claimant, who, according to the file, is a member of the College (...), requests this College to "consult all the acts of the Electoral Board of the last elections of June 2018".
2. On March 19, 2019, the secretary of the Governing Board of the College sent a letter to the complainant, in which she explained that the consultation of all the records must have some type of concrete justification that the sole the bidder must also motivate, taking into account that, according to the College "the content of all the activity carried out by the Electoral Board, during the electoral process for the 2018 Governing Board, is published on the college website and is available to all members and as a result of Mr. (...)."
3. On April 12, 2019, the interested person filed a complaint with the GAIP alleging that he wanted to "see some acts of the Electoral Board", he states that the Administration has given him information, and alleges that the numbers of the acts do not appear, that the College makes a restrictive interpretation of article 24 of Law 19/2014, and that for its request it is not necessary to adduce any justifying reason.
4. On April 30, 2019, the GAIP requests from the College a report in relation to the claim presented, as well as the file relating to the request for access to public information and, if where applicable, the identification of third parties who are affected by the access that is claimed.
5. The file contains a copy of the College Report of May 15, 2019, in which the considerations made in the letter of March 19 are reiterated, and it is added that if the claimant requests additional information to that published - the numbering of the minutes -, this would be a "matter that the complainant can request before the College without the need for GAIP intervention".

6. On May 23, 2019, the GAIP requested clarifications from the College about the information that would have been made public on the website and "if the person making the claim had access to all or some of the acts", only request that the GAIP reiterates on June 3, 2019.

7. The file contains a second report from the College, dated June 17, in which the College clarifies that "the person claiming did not have access to the records, but was aware - like the rest of collegiates - of the essential content of the acts and agreements, reproduced in due course through the web (...)". According to the College's interpretation, having seen the claimant's allegations, he "does not want to have access to personal data, because none of this data refers to the reason and objective of seeing the proceedings by Mr. (...)." Therefore, according to this second Report, the College is at the complainant's disposal so that he "has access to all the acts of the electoral board, can consult them and obtain the information he needs, with the limitation set out when personal data (...)."

8. The file contains a letter from the claimant, dated June 29, 2019, in which he reiterates, in relation to the College's offer to hide "the names of the people in the minutes", that this offer "doesn't make sense because it's electoral board acts not therefore subject to any personal data protection indicator."

9. On July 2, 2019, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter LTC), 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).

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 included in the information requested by the claimant, a member of the College, specifically, the acts of the Electoral Board of the June 2018 elections, 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 29 December 2014, on transparency, access to information and good governance (LTC), aims to regulate and guarantee the transparency of public activity.

Article 3.1.b) of the LTC includes in its scope of application, among others, "(...) professional associations and public law corporations in what affects the exercise of their public functions".

Law 7/2006, of May 31, on the exercise of qualified professions and professional associations, provides that professional associations "in their capacity as corporations under public law and in the scope of their public functions , they act in accordance with administrative law and exercise the powers inherent in the public administration" (article 66.1).

The Professional College is a corporation under public law, which carries out public and private functions. The creation, organization and functions of the College do not depend only on the will of the members, but also on what is determined by the legislature itself. In matters of the electoral regime, the legislator tries to protect a general public interest such as that the organization and action are democratic (STC 386/1993, of December 23) given the public functions entrusted to them.

Thus, the electoral regime for the Board of Governors of the College is one of the material areas of the activity of corporations under public law to which the right of access to public information can be applied, given its link with the public functions entrusted to them.

According to article 18 of the LTC "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 legal entity legally constituted." And the exercise of this right "is not conditional on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of any rule".

In this case, from the documentation provided, it appears that the claimant is a member of the College to which he claims access to the minutes of the electoral process of June 2018, so it can be understood that he would have the status of interested in the procedure of said electoral process.

Article 2.b) of the LTC defines public information as "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 the one supplied by the other obliged subjects in accordance with the provisions of this law". In similar terms, Law 19/2013, of December 9, on transparency, access to public information and good governance, (hereinafter, LT) is pronounced.

In this case, the information requested by the person making the claim is included within the concept of public information in the aforementioned article 2.b) of the LTC, and therefore remains subject to the access regime provided for in the transparency legislation.

However, the LTC itself establishes that, in those cases in which the public information that is sought to be accessed contains personal data (as happens in the case examined), for the purposes of granting or denying access, it will be necessary to have taking into account the limits established in articles 23 and 24 of

### III

At this point, given the information available in the file, it is appropriate to specify, given the information available, what is the information that the claimant requests to know.

According to the College's first report, dated May 15, 2019, "(...) all the information is available to all members through the publication on the college website of all the activity developed by the Electoral Board during the electoral process for the 2018 Governing Board."

According to this same report, in the letter addressed by the College to the claimant on March 19, 2019, "(...) the Electoral Board carried out the publication of the most relevant information in relation to the electoral process (convocation and holding of elections) and of the agreements adopted during the electoral process on the website of the College)", and a link (...) is indicated, which "collects a total of twenty-one documents (...); they consist of the agreement calling for elections, the electoral regulations, information on the constitution of the electoral board and the first agreements related to the electoral process,(...), minutes of meetings of the Electoral Board and definitive proclamation of the elected candidacy."

The file contains a copy of an email from the claimant addressed to the GAIP, dated May 21, 2019, according to which what the claimant would have requested, and would have been denied by the College, is access to "all acts corresponding to the electoral board of the past elections. I am not interested in the constitution or the closure as the end of actions, what I am interested in seeing and verifying are all the intermediate acts that the Electoral Board had to draw up based on the different requirements that during the electoral process he received." With regard to the information available on the College's website, the claimant adds that "at the time they did not present all the minutes that had to be drawn up, which are the ones that as a member I ask to see."

At the time of issuing this report, the electronic address indicated in the file contains various documentation relating to the electoral process that is the subject of the claim. Among others, there is a copy of a single minute, corresponding to a meeting of the Electoral Board, on June 13, 2018, with the following items on the agenda: "1. Approval of previous minutes. 2. Receipt of the acts of the different electoral months, tally of votes and provisional proclamation of elected candidates. 3. Aspects of urgent approval, if applicable."

The file contains a second report from the College, dated June 17, in which it is clarified that "the person making the claim did not have access to the minutes, but was aware - like the rest of the members - of the essential content of the acts and agreements, reproduced in due course through the web (...)". According to the College, in light of the claimant's allegations, he "does not want to have access to personal data, because none of this data refers to the reason and objective of seeing the proceedings by Mr. (...)."

However, it must be noted that the file contains a letter from the claimant, dated June 29, 2019, in which he reiterates, in relation to the College's offer to hide "the names of the people from the acts", that this offer "does not make sense because it is acts of the electoral board that are therefore not subject to any personal data protection indicator."

Therefore, given the information available, and without prejudice to the fact that the claimant had previously been able to access various documentation about the electoral process in question (which would have been made public on the College's website in response to the requirements of active advertising that transparency legislation), given the available information, it seems clear that the claimant has not had access to the specific documentation he is requesting, which is, as the claimant explains, "all the acts of the Electoral Board of the past elections of June 2018", records that the claimant requests to know in full, and not anonymized, as of

#### IV

The claimant requests access to the full content of "all the acts of the Electoral Board of the last elections of June 2018".

The file contains the "List of identification of the third parties involved who are affected by the access claimed by the complainant" (Document number 3, issued at the request of the GAIP). In particular, a total of 11 natural persons are identified, with first and last names and membership number, which must be understood as the people who would appear in the acts that the claimant requests to know.

Article 33 of the Statutes of the College (...), provides that "The College has two governing bodies: The General Board of members and the Board of Governors". Title VI of the Statutes (arts. 51 et seq.) regulates the participation of collegiate persons in governing bodies and the electoral system. Article 52 of the Statutes provides that "Every four years the Board of Governors calls ordinary elections to cover all the elected positions of this body", and the same article adds that "The figure of the Electoral Board, responsible for to oversee the entire electoral process, which may perform the functions that in these Statutes are attributed to the Board of Governors in the electoral process."

The information subject to access (acts of the electoral process in the 2018 Board of Governors), could contain information not only about the calling of elections, but also about the submission of candidacies, the electoral roll, the constitution of the electoral board, the ballots, the way of certifying the vote, the vote by mail, the scrutiny and the taking of possession of the chosen candidates, etc., as is clear from the provisions of the Statutes of the College.

For the relevant purposes, some of these acts may not incorporate personal data (for example, an agreement on the design of the ballots - art. 55 Statutes - or on the possibility of voting by mail or electronic voting -art. 56 Statutes-, etc.). In this case, there would obviously be no impediment from the point of view of personal data protection regulations to facilitate access to the member.

From the documentation in the file, it is not clear or can be verified what is the complete and specific content of the acts requested, which are all related to the electoral process, as the claimant explains.

For the assumption that there may be specially protected data, it should be taken into account that article 23 of the LTC, cited, establishes the following:

"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, 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 by means of a written which must accompany the application."

In this regard, in the event that there was information specially protected from collection in article 23 of the LTC about any of the affected persons (a matter that this Authority is unaware of given the information available), such as for example information about the loss of the status of collegial person due to disciplinary sanctions that do not entail a warning and that may affect the right of active or passive suffrage of the candidates (art. 16 in connection with art. 51 Statutes), access to this data should be denied, unless the consent of the affected persons is available.

In relation to the rest of the personal data that are not considered specially protected, article 24 of the LTC provides the following:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights.

2. If it is other information that contains personal data not included in article 23, access to the information can be given, 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."

The person making the claim does not specify the purpose or specific reasons why they want the information they request. In any case, according to the preamble of the LTC, transparency and the right of access to public information are consolidated as certain tools of social control of the Administration and its activity, for the benefit of greater quality democratic

In this context, it could be understood that the purpose of the person claiming, who has the status of associate and, therefore, when requesting access to this documentation, is to control that the performance and the organization of the College are democratic.

With regard to those items on the agenda that are included in the requested acts, relating to the electoral process in question, given the terms in which the request is formulated, in principle, although it is unknown which is the content of these parts or points of the minutes, it seems predictable that there will be data such as the name and surname of the candidates, without being able to rule out other types of data, related to different incidents that could have affected

There could also be data related to the people involved in the organization of the electoral process in the acts claimed. Thus, in accordance with Title VI of the Statutes of the College, which regulates the electoral process of the College, it is foreseeable that these acts will contain, among others, the data of the members of the governing bodies or of the College law that intervene in the exercise of their functions, as would be the case of auditors (article 59 of the Stat

the polling station (article 54 of the Statutes), the designation of the people involved in the control and scrutiny of the vote (article 58 of the Statutes), among others.

In this case, it would be identifying data (name and surname and position) as participating members in the exercise of their functions. Therefore, in view of what is established in article 24.1 of the LTC there would be no impediment from the perspective of the right to data protection in providing these identifying data of these people involved in the electoral process.

Having said that, with regard to access to the rest of the personal information of any other person who is identified in the acts of the electoral process, for example the candidates, it requires a prior weighting between the different interests at stake, provided for in the article 24.2 of the L

Thus, with regard to candidates, the minutes may contain, among others, data on the identification of these people and their membership in a certain candidacy, on the requirements to be a candidate, on the reasons for the exclusion of a candidacy or of a candidate, on the proclamation of the chosen candidacy and taking possession or on the causes of termination of the members of the Governing Board.

From the point of view of the right to data protection, it is considered that access should be facilitated to that personal information included in the acts that is essential to achieve the objective of controlling that the action and the organization of the College are democratic, such as the identity of the candidates and the composition of the new Governing Boards.

However, it should be borne in mind that the principle of minimization (Article 5.1 c) of the RGPD) requires that the data to be processed are adequate, relevant and limited to what is necessary for the purpose for which they must be treated. Therefore, prior to access, it would be necessary to omit those data that may be included and are unnecessary to achieve the goal of transparency pursued.

Remember in this sense, that article 25 of the LTC, expressly provides for the option of facilitating partial access to the requested documentation when it states that "if any of the established access limits to public information are applicable for the previous articles, the denial of access only affects the corresponding part of the documentation, and restricted access to the rest of the data ha

Thus, by way of example (since, as has been said, the exact content of the acts claimed is unknown), it seems foreseeable that it could be relevant to the intended purpose, for example, access to nominations, but not to the identification of the members of the excluded candidatures.

With regard to the act of proclamation of the chosen candidacy and rush of possession, there would be no inconvenience in providing the merely identifying data (name and surname and, where applicable, membership number) of the composition of the new Board of Government resulting from the electoral process of June 2018, given that this is data that by its very nature (Governing body of the College) must be known by all members. For the same reason, there would also be no problem in handing over the identification of the members of the Governing Boards that have ceased, but not the causes of termination, in the event that any of the acts claimed incl

Regarding the ballots, article 55 of the Statutes provides that: "Members exercise their right to vote on the official ballots, authorized by the College, with a unique format and dimensions. At the time of voting, the members of the table must be identified with their card



member or ID card and must cast their vote in a sealed ballot box. The secretary of the table notes in a list the names of the collegiate people who have cast their vote."

According to article 56 of the Statutes:

Likewise, members can also vote by regular mail.

It is also possible to cast the vote by electronic means if the Board of Governors so agrees in the same agreement calling the elections. The procedure for exercising the right to vote electronically, as well as its requirements, will be regulated by means of a Regulation that will be approved by the General Meeting at the proposal of the Board of Governors.

In any case, the vote by electronic means will be done by means of an electronic signature that will allow the identity and membership status of the person issuing the vote to be verified, and the exercise of the right in a secure and confidential manner."

Regarding the postal voting procedure, article 57 of the Statutes provides that:

"The College will send each registered person the ballots for all the nominations and a set of envelopes composed of a white envelope, and a special envelope on which the following inscription will appear: "contains ballot for the "election of the Board of Governors of the College (...)"

voting Name and surname:  
No. of member: Signature

The voter will choose the ballot for the candidate he/she wishes to vote for and insert it into the white envelope and:

a) If you vote in person, with documentary identification, you will hand this white envelope to the president of the polling station, who will insert it into the ballot box. b) If you vote by mail, you will insert the white envelope into the special envelope and, after recording the requested data, you will send it by mail and with sufficient advance notice to the Secretary of the Board of Governors within a third envelope in which the word: "Elections" will appear prominently. (...).

Once the voting is over, the ballot boxes are opened and the scrutiny is done, which is public. The president can set up two teams for scrutiny, chaired by him and the deputy president. The table secretary draws up a record of the vote and its incidents, which must be signed by all the members of the table and the auditors, if there are any, who have the right to record their complaints.  
"

It follows from all this that in principle there would be no problem in giving the claimant access to the minutes that reflect the scrutiny of the votes in general (in an aggregated form) and in any case a breakdown of the number of votes cast have performed However, in no case can access be given to the identification data (name and surname, signature, member number or DNI of the voters), regardless of the method they used to vote, given that the vote is secret (art. 51 Law 7/2006).

**In fact, according to articles 57 and 58 of the Statutes, the one who carries out the scrutiny is not the Board of Governors, but the electoral board. Therefore, this is information that should no longer be available to the Board of Governors.**

**Beyond that, and in the absence of more concreteness in the request and given the information available, the disclosure of more personal information that the minutes may contain, in the terms indicated, would not seem justified.**

### **Conclusions**

**The data protection regulations would not prevent access to the requested information, regarding the people who intervene in the electoral process in the exercise of their functions. With respect to the rest of the people affected, the data protection regulations do not prevent access to the names and surnames of the people who make up the admitted candidates and those who have been chosen.**

**On the other hand, and in the absence of greater concreteness, it would not be justified to give access to special categories of data that may be included (art. 23 LTC), to information on other incidents that may affect candidates or other data, such as personal data related to the exercise of the vote by the members.**

**Barcelona, July 17, 2019**