

Ref. AJ: IAI 39/2019

**Claim: 312/2019**

**Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim submitted by a citizen against a City Council for the denial of access to information on the expenses incurred by municipal political groups in charge of the financial endowments given by the corporation.**

**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 312/2019 presented by a citizen against a City Council in relation to the denial of access to information on the expenses incurred by the municipal political groups in charge of the financial endowments delivered by the corporation.**

**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 April 11, 2019, a citizen submitted a letter to the City Council in which he requested a breakdown of expenses by year and justification with invoices included, of the destination of the money received by each of the political groups of the City Council of from 2014 to 2018, grouped by political group and year and all the municipal intervention reports on these expenses.**
- 2. On May 21, 2019, the interested party filed a complaint with the GAIP alleging that he had not received a response from the City Council and that he had not been given the information. In this letter, the claimant reiterates his request.**
- 3. On May 24, 2019, the GAIP requested a report from the City Council in relation to the claim presented.**
- 4. On July 3, 2019, the GAIP requests this Authority to issue a report in relation to the claim submitted.**

#### **Legal Foundations**

I

(...)

## 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).

Therefore, the processing of personal data (art. 4.2 RGPD) that may be contained in the requested information, specifically, in the receipts for the expenses incurred by the municipal groups, is subject to the principles and guarantees of the protection regulations of personal

According to article 86 of the RGPD:

"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 apply it 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.

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

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

The information related to the financial allocations received by the municipal political groups in charge of the municipal budgets is "public information", subject to the access regime provided for in the transparency legislation. However, in accordance with article 20 and s. of Law 19/2014, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information containing 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 regulated in Law 19/2014 which invokes the requesting person.

### III

As can be seen from the claim, the person making the claim requests to obtain the breakdown of expenses by year and the justification with included invoices of the destination of the public money received by each of the municipal political groups between the years 2014 and 2018, grouped by group politician and year, as well as the municipal intervention reports on these expenses.

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

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

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

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

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

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

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

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

From here, information is requested on the destination that the political groups would have given to the amounts received including expressly the invoices or documents that would justify this destination, all this with respect to the period between the years 2014-2018.

Given that the type of information requested does not appear to contain particularly protected data, it is necessary to take into account article 24.2 LTC according to which, "...it is possible

to give access to 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. (...).”

#### IV

It must be agreed that the person making the claim states in his application to the City Council that he exercises the right of access in his professional capacity as a journalist.

In this sense, as the European Court of Human Rights (ECtHR) has repeatedly highlighted in relation to the right to freedom of expression, which includes the right to receive or communicate information and ideas (Article 10 of the European Convention of Human Rights), it is necessary to take into account the special position of journalists and the media - as well as other applicants for public information, such as non-governmental organizations, researchers or activists - since they have carry out an action, as a "watchdog", which contributes to the exercise of the right to give and receive information and, ultimately, to the public debate. We cite as an example, the *SSTEDH Bladet Tromso c. Norway* (May 20, 1999), *Rosianu v. Romania* (June 24, 2014), or *Magyar Helsinki Bizottsag v. Hungary* (November 8, 2016), among many others.

Thus, it is sufficiently contrasted, taking into account the regulatory framework (art. 20.1.d) EC, and art. 10 CEDH), and the jurisprudence, that journalists -among other professionals and collectives- would have a prominent role in contributing to the formation of free public opinion.

Therefore, the journalist status of the person requesting access to public information may be an element to take into account - although not in isolation but together with other elements - for the purposes of the weighting that must be carried out, for the purposes of article 24.4 LTC.

Now, in any case, it does not seem that the mere status of a journalist who requests access to public information must necessarily lead to access to personal data of third parties, specifically, those that could contain the invoices alone bids, at least, without taking into account other weighting elements. Thus, it will be necessary to take into account the concreteness of the reason or the justification that the claimant of the information can make.

#### V

Regarding access to information on the destination and justification of the expenses that the political groups would have made with the financial endowments received, from the point of view of the data protection regulations, it is necessary to analyze whether there would be any limitation to take into account the personal information that could be affected by the eventual access of the claimant

to the accounting and supporting documentation that could eventually be provided by the different political groups at the request of the Plenary of the corporation. Question that will need to be resolved by making a reasoned weighting between the different rights and interests at stake (art. 24.2 LTC).

The person making the claim does not justify the specific reason for which they are interested in accessing the requested information. According to article 18.2 LTC, the right of access does not require the citizen to state the specific reasons that would justify access to certain information, but these may be relevant when deciding on the prevalence between other rights, in fact the purpose is one of the weighting criteria indicated by the Law itself (art. 24.2. b) LTC).

Having said that, it should be noted that the purpose of the transparency law is to establish a system of relations between people and the public administration and other obliged subjects, based on 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). In the absence of greater concreteness on the part of the applicant, the purpose of the access must be placed in this context.

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

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

There is no information available on what personal data could be contained in the requested documentation, such as the accounting documentation and the various supporting invoices for these expenses. Now, in general, and to the extent that the funds received by the political groups should be used for operating expenses, the range of expenses that could have been made with this money is wide. It can range from the purchase of office equipment, the rental of premises to carry out the group's activity, the organization of advertising campaigns, the hiring of external professional advice, to the payment of representation expenses (diet, travel, lunches, etc..).

Thus, this information, on the one hand, could provide information about the activity of specific councilors who are members of the group, depending on what information is contained in the justifications (e.g. lunch of a certain councilor with another person in a certain restaurant) or that, without the need for their direct identification to be recorded, can be related to a specific person (for example, in the case that the political group is formed by a single person, as is the case in this case, two of the municipal groups). But on the other hand, it could provide information on third-party individuals who may have been hired to perform a service (for example, if a professional had been hired for external advice).

For the purposes of transparency, and in general, it may be relevant to know the information on what the destination is, that is, what and what part of the public endowment has been intended to cover material costs, rent of premises, or to cover advertising campaigns or expenses of

representation, or any other operating expenses of each of the groups. Knowing the different concepts of expenditure and their amounts, would make it possible to verify that the endowments are allocated to operating expenses and not to other things, and to what extent they are ca

Regarding the information that may affect the councilors who are members of the group, in the case of representation expenses (travel, lunches, etc.) it would be advisable to limit this information to the minimum content to comply with the purpose of controlling the destination of the funds that the political groups receive. For example, with regard to the information about the lunches that a councilor has had, due to his representative function, this information could contain the names of the restaurants, the amounts paid, etc., but it would not be necessary to provide information on the types of menus that you have requested, as this would allow us to analyze or establish certain aspects related to, for example, your health, your personal preferences or inappropriate or relevant behavioral guidelines, in order to achieve the intended purpose. Thus, the degree of interference with the privacy of the councilor would be much lower and would undoubtedly respect the principle of data minimization. In the case of travel, to take another example, it would not seem necessary to provide tim

However, in the event that it is a question of expenses that are recorded as imputable to the activity of a certain councilor, the data protection regulations would not prevent access to this informati  
From the point of view of the councilor who may be affected, it must be taken into account that these people hold public positions, have and use, with a wide margin of discretion, public money that should be intended to cover expenses of functioning of the group of which they are part, and therefore linked to the public purpose they pursue. The need to control this margin of discretion in relation to the use of public funds can justify access to this information.

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

## VI

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

On the other hand, it may seem like a case analogous to the exposure to which the administration's contractors are subjected, who, by mandate of the LTC are subject to a demanding regime of active advertising (art. 13 LTC), but it is necessary keep in mind that in this case it is not about controlling these third parties, but about controlling the destination of the funds.

In this sense, the objective of transparency would also be achieved without the need to identify and sacrifice the privacy of natural persons who may eventually appear in the set of affected documentation. Thus, by applying the principles of proportionality or minimization in the processing of data, it is considered that the eventual access to the requested documentation should not include information that allows them to be identified.

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

## VII

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

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

### conclusion

The data protection regulations do not prevent the claimant from accessing information about the different types of expenditure incurred by these groups and the amounts allocated to each of them, including the fact that some of these expenses may be linked to a certain councilor.

Beyond this, given the information available, from the perspective of data protection (principle of minimization) it does not seem justified, general access to the personal data of third-party natural persons other than councilors or of working people in the service of the local corporation, who appear on the invoices and supporting documentation, for the purposes of controlling the destination of the funds received by the political groups.

Barcelona, July 16, 2019

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