

Ref.: IAI 42/2019

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 city council for the denial of access to information related to the judicial imputation of public charges of 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 the claim submitted by a citizen against a city council for the denial of access to the information related to the judicial imputation of public positions of 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 submits a letter to a town hall in which he states that, as the person responsible for a publication, he is interested in obtaining the following information:

- 1- Confirmation by the City Council as to whether the current police chief is being investigated and accused in the proceedings followed in some courts of inquiry.
- 2- What crimes allegedly committed by this official are imputed to him.
- 3- Why was it not acted in the same way as with the previous head of the local police, who was removed from his job.
- 4- If, in addition to this official, there are more political positions and/or officials linked to the City Council under investigation.
- 5- How many disciplinary files have been opened during the current mandate and what is the cost that has been incurred by the City Council in all its concepts (such as the instructors' fees).

2. On May 24, 2019, the City Council decides to reject the request for access to the information indicated in sections 1 to 4 of said request, considering that the information requested refers to documents of 'judicial bodies, does not have the character of public information of this town hall. It is pointed out that the information about a possible procedural situation of accused or investigated officials or members of the corporation derives in any case from acts that emanate from the courts and not from the city council, and it is considered that it is neither information prepared by this Administration nor is it a consequence of its activity or the exercise of its functions. He points out that the courts do not supply this city council with information about said procedural situations.

The request for access to the information indicated in section 5 is appreciated, considering that in this case it has the character of public information of this City Council, and that since the questions refer only to the number of files and an economic amount, access is not affected by any of the limits provided for in article 21 of Law 19/2014. For these purposes, the resolution was ordered to be transferred to the Department of Human Resources to facilitate this information.

3. On June 5, 2019, the applicant submits a claim to the GAIP against the City Council in which he requests data relating to judicial imputations of public officials, in respect of the right of access to the information that you have as a citizen and as a person in charge of a local media.

4. On July 16, 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 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. Article 4.1 of 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 the concept of personal data as "all information about an identified or identifiable natural person ("the data subject")" and considers as an identifiable natural person "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, as por ejemplo a number, an identification number, location data, an online identifier or one or several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person."

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

The present claim is filed against the partial denial of access to information related to legal cases open to City Council charges.

Article 5.1.a) of the RGDPR 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 RGDPR, 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 RGDPR 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 RGDPR when so established by a rule with the rank of law.

At the same time, article 86 of the RGDPR 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."

Article 18 of Law 19/2014 (hereafter LTC), establishes that "people have the right to access public information, referred to in article 2.b, individually or on behalf of representation of any legally constituted legal person" (section 1).

Article 2.b) LTC 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 the

its functions, including those supplied by the other obliged subjects in accordance with the provisions of this law".

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

The City Council denies the request for access to the information requested in points 1 to 4 of the request considering that the information on the procedural situation of investigated or accused officials or members of the corporation does not have the character of public information from the City Council for the purposes of article 2.b) LTC.

Warn that, although the information contained in court documents is not, as the City Council points out, information prepared by it, insofar as it is information held by the City Council for having intervened or participated in some way in these judicial processes - either because it is the same entity that reports alleged criminal acts to the courts, or because it was required during the investigation for the provision of documentation or the performance of any other action that would be public in accordance with the definition of article 2.b) LTC, given that this information would be obtained as a result of the exercise of their functions, and would therefore be subject to the right of access (art.18 LTC).

On the other hand, the mere knowledge on the part of the City Council of the existence of these investigations or imputations against its staff in court through the media or any other way, without having intervened in these court cases, cannot be considered information public since this knowledge would not derive from their activity or the exercise of their functions. In this case, as the City Council points out, the information of which it has knowledge escapes what must be the object of the right of access.

Having made this point and for the case that the information is public in the terms set out, the type of personal data that would be affected by access, and the limitations that may arise in terms of the right to protection, are analyzed below of data of the person/or persons affected.

Considering that the City Council has already resolved to estimate the access to the requested information on the number of open disciplinary files and the cost that these have entailed on the City Council, this analysis will be done with respect to the information requested. tendered in points 1 to 4 which has been refused

III

Article 23 LTC states that: "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 to it by means of a written document that must accompany the request."

In the same line, article 15.1 of the LT, provides, according to the new wording given by the eleventh final provision of the LOPDGDD: "(...) If the information includes personal data that refer to racial origin, health or sex life, include genetic or biometric data or contain data relating to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, access may only be authorized in the case of that is counted with the express consent of the person affected or if that person was protected by a rule with the rank of law."

These precepts exclude the citizen's right of access to data related to the commission of criminal or administrative offences, unless the express consent of the affected person is obtained, or if this entails a public reprimand to the offender .

The claimant alleges the right to information due to his position as head of a media outlet.

Indeed, the European Court of Human Rights 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 on Human Rights), recognizes 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 carry out an action, as "watchdogs", which contributes to the exercise of the right to give and receive information and, ultimately, to the public debate (SSTEDH Bladet Tromso v. Norway (May 20, 1999), Rosianu v. Romania (June 24, 2014), or Magyar Helsinki Bizottsag v. Hungary (8 November 2016), among many others).

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. In this sense, the journalist status of the person requesting access to public information can be an element to take into account - although not in isolation but together with other elements -, for the purposes of making a weighting between the public interest in obtaining the information and the rights of the affected persons.

In this case, however, the transparency legislation protects and limits access to information that may contain data related to the commission of criminal or administrative offenses, and requires the express consent of the affected persons without the possibility of making any weighting in this regard .

The information requested in points 1 to 4 of the request is directly related to any investigations carried out in criminal proceedings on facts or conduct attributable to positions and/or public employees of the corporation, and in attention to the article 23 of the LTC, it would not be possible to provide it to the claimant.

conclusion

In accordance with article 23 of the LTC and since the information claimed in points 1 to 4 of the request is related to the alleged commission of criminal or administrative violations, it will be necessary to limit the claimant's access to said information

Barcelona, September 10, 2019

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