

Ref.: IAI 46/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to a claim presented by a councilor against a city council for the denial of access to information on the Mayor's agenda.

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 councilor against a city council for the denial of access to information on the Mayor's agenda.

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 July 19, 2019, a councilor requests from the Mayor's Office that he be given access to information on what the Mayor's agenda has been for the last three months, indicating the people with whom he has met and a description of the reason for the meeting.

Specifically, he points out that despite the publication of the Mayor's public agenda on the municipal website, neither the people with whom he meets nor the reason is indicated, information he considers necessary for the development of his tasks as alderman.

2. On August 16, 2019, the Mayor's Office resolves the request, informing the councilor that although information is provided on the website about meetings with other public officials or interest groups for the purposes of transparency legislation, the information on meetings held with third parties for purposes other than the own actions of the interest groups, is provided anonymously, given that their right to privacy is considered to prevail.

3. On August 17, 2019, the councilor submitted a claim to the GAIP against the City Council for the denial of access to the requested information. He shows his disagreement with the City Council's response, emphasizing that it does not have a register of interest groups, and that the information published on the corporate website does not provide the specific information. He points out that he is limited to using generic words such as "company," "name," "meeting," "people," "etc." with whom the Mayor has met, nor the reason for the view.

He insists that what he is asking is not the publication but that he be provided with a list of the people who have met with the mayor in the last three months and the reasons for the meeting, and points out that he has the right of access as a councillor, without prejudice to the fact that the information referring to natural persons, who in their own interest and representation, have met with the Mayor to deal with matters related to specific administrative files must be anonymised.

4. On September 6, 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 request a report from 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.

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), applicable from May 25, 2018 (article 99), 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"

(Article 4.1) RGPD).

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.

II

Article 4.2) of the RGPD considers "treatment": any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation ,

adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction.”

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides that the treatment will be lawful if "it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

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

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

The first additional provision, section two, of this Law establishes that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law. "

The person requesting the information has the status of councilor of the City Council, which means that the provisions established by the local regime legislation are applicable, fundamentally, Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) and Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Regime Law of Catalonia (TRLMRLC), as regards to councillors' access to municipal information.

This without prejudice to the fact that the complaining councilor must be granted at least the same guarantees regarding access to information - including the possibility of lodging a complaint with the GAIP - as other citizens who do not have this condition of elected office, given the supplementary application of the LTC (DA1a. section 2).

III

As this Authority has done on previous occasions (among others, reports IAI 34/2017, IAI 45/2017, IAI 23/2018, IAI 24/2018 or IAI 2/2019, which can be consulted on the website <http://apdcat.gencat.cat>), the local regime legislation (article 77 LRBRL and article 164.1 TRLMRLC) recognizes a right of access to all elected positions, regardless of whether they are in the government team or in the opposition, to the information that their local corporation has and that may be necessary for the exercise of the functions that correspond to them.

Thus, article 77.1 of the LRBRL establishes that "all members of local corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the services of the Corporation and are necessary for the development of their function".

In the same sense, the TRLMRLC pronounces itself, by providing, in its article 164.1, that "all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions, in accordance with repeated jurisprudence on this issue (SSTS September 27, 2002 , June 15, 2009, among others), is part of the fundamental right to political participation enshrined in article 23.1 of the Spanish Constitution, according to which "citizens have the right to participate in public affairs, directly or through representatives, freely elected in periodic elections by universal suffrage."

It should be borne in mind that the elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis, study and information of the necessary antecedents , which have the services of the City Council, for their control task and to document themselves for the purposes of adopting decisions in the future (among others, STS of Ma

However, this does not mean that this right of councilors is an absolute right. If it conflicts with other rights, it will be necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

This has come to be recognized by the local regime legislation itself. The mentioned article 164 of the TRLMRLC, in regulating the conditions for the exercise of the right of access to municipal information by the members of the corporations, establishes, as a possible basis for denying the request for information with reasons, that "the knowledge or the dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's image" (section 3, letter a)), but obviously access could also be denied, given the nature of the right to data protection (STC 292/2000), when, regardless of whether certain data can be considered intimate or not, there are other specific circumstances related to personal data that justify it, in particular under the protection of the principle of data minimization, according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are pro

This principle implies, on the one hand, that access to municipal information that includes certain personal data, without the consent of those affected, must necessarily be linked to the exercise of the functions that correspond in each case to the councilor what it is about, in the terms provided for in the local regime legislation. On the other hand, it involves a weighting exercise, in order to assess the implications that, in each case, the exercise of the councilors' right of access to information may have for the rights of the people affected, such as the right to the protection of personal data (Article 18.4 CE).

Local legislation does not require councilors to explain or justify the purpose of their request in order to access municipal information, given that according to repeated Supreme Court jurisprudence, the reason for their request is 'must be understood as implicit in the exercise of the control and inspection functions of the governing bodies of the corporation, as explained in article 22.2.a) of the LRBRL. Even so, in cases where there is information of a personal nature, the fact of explaining the reasons why access is of interest

account when making a careful weighting between the right of access to the information of the councilors and the right to data protection of the people affected.

Taking into account that the claimant in this case is limited to requesting the information referring to his status as a councillor, it will be necessary to analyze the nature of the personal information that could be affected and the impact on the privacy of these people, and assess whether the alderman's access to this data could be necessary for the performance of the control and inspection functions of the governing bodies attributed to the aldermen.

Thus, from the outset the disclosure of information about the participation in events or meetings of the Mayor that identifies or allows the identification of third parties attending would also affect the personal sphere of these third parties, and therefore, it is not possible to assess the possibility of providing information about who met with the Mayor, without taking into account the right to data protection of these people.

Within the agenda of ordinary activities of a Mayor, there can be meetings and events of different types. Broadly speaking, we could classify these meetings into at least three large groups: a) meetings with other public officials, b) meetings with people considered by the LTC as interest groups, and ic) meetings with people who they would not have this consideration held to deal with any matter, such as matters related to administrative files of municipal competence.

IV

With regard to the meetings held with other public officials of the administration, it is to be foreseen that these meetings take place within the framework of the exercise of powers or functions attributed to the Mayor and the other public office in question. Therefore, it is necessary to think that the object or the reasons for the meeting will be directly related to the public activity developed by these people.

The disclosure of said information would affect the professional or work sphere of these people. However, they are public servants, and as such they must anticipate that the actions they take in their ordinary activity may be subject to the scrutiny of the public. The privacy expectations of people who hold public positions with regard to the work or professional activities they carry out are not comparable to those that other people who act in the private sphere may have.

In this case it is a councilor who requests the information. The knowledge of the public matters dealt with by the Mayor with these people may be relevant to the effects that he can monitor what their actions have been in relation to a certain matter or matter during a certain period.

For all that, the right to data protection of the affected public officials should not prevent the councilor's access to information about the matter discussed and the public official attending the meeting, including the name and surname of the person that occupies it

With regard to the meetings with natural persons considered as interest groups for the fact of carrying out "actions of active participation in public policies or in decision-making processes in Catalonia with the purpose of influencing the orientation of "these policies in defense of one's own interest or of third parties, or of a general interest" (Article 2. g) LTC), the legal regime provided for in the transparency legislation must be taken into account.

Section 1 of article 47 LTC provides that they must be registered in the Register of Interest Groups:

"a) The people and organizations that, regardless of their form or legal status, in their own interest, that of other people or organizations carry out activities likely to influence the drafting of laws, rules with the rank of law or general provisions or in the preparation and application of public policies.

b) Platforms, networks or other forms of collective activity that, despite not having legal personality, constitute a de facto source of organized influence and carry out activities included in the scope of application of the Register."

Section 2, of this same precept states that "the scope of application of the Register includes all activities carried out with the purpose of directly or indirectly influencing the processes of elaboration or application of policies and the decision-making, regardless of the channel or medium used, including contacts with authorities and public officials, deputies, officials and staff at the service of the institutions, and also voluntary contributions and participation in official consultations on legislative proposals, regulations , legal acts or other inquiries."

To this, we must add the provisions of Decree 171/2015, of 28 July, on the Register of Interest Groups of the Administration of the Generalitat and the public sector. In accordance with the Transitional Provision of Decree Law 1/2017, of February 14, which creates and regulates the Registry of Interest Groups of Catalonia, until Decree 171/2015 is amended, the references contained in Register of interest groups of the Administration of the Generalitat and its public sector, are understood to be made in the Register of interest groups of Catalonia, and references to the Administration of the Generalitat, and its public sector 'means made to public bodies, entities and organizations included in article 3.1, letters a, bic of Law 19/2014, of 29 December.

The range of people and entities that can act as interest groups is wide. Article 13 of Decree 171/2015 classifies them in several categories according to the sectors in which they operate: Consulting and advice sector (professional consultancies, collective offices, sole proprietorships); business and association-based sector (companies and groups of companies, corporations under public law, professional, business and trade union associations), other organizations (entities organizing events, foundations and associations, platforms and networks, etc.).

Decree Law 1/2017, of February 14, which creates and regulates the Register of Interest Groups of Catalonia, in section 2 of its single article, provides that the Register must be organized "from in such a way that it is possible to have public knowledge of the interest groups that act before each of the administrations or institutions that make it up, as well as of the influence or intermediation activities that they develop in front of them."

The Register must include, among other information, a list, ordered by category, of people and organizations that act with the purpose of influencing the development and application of public policies, and their headquarters organization." (article 49.1. a) LTC), and must publicize the actions of the interest groups, especially the meetings and hearings held with authorities, public officials, elected members or deputies, and the communications, reports and other contributions in relation to the matters dealt with (article 49. 2 LTC).

The same transparency law expressly provides that the information requested regarding those persons considered as interest groups is accessible to citizens through the Register created for the purpose, and where they must be registered obligatorily all natural or legal persons, or other groups that the Law considers as such, as well as all activities of direct or indirect influence carried out by these interest groups.

In these cases, the same Transparency Law prevails over the public interest in the knowledge of said information over the right to privacy of the persons affected, and expressly states that the persons who apply for registration in the Register have the obligation as declarants, to accept that the information provided is made public (article 50 a) LTC).

In the event that the interest group is a legal entity or person, it will be its representative who declares under his responsibility and accepts the code of conduct common to all interest groups and the obligations entailed by the registration, of in accordance with article 16 of Decree 171/20

From all this, it can be concluded that, in relation to events or meetings held with people who can be considered interest groups in the terms provided for in article 47 LTC, to the extent that their publicity through of the Register of interest groups, there must be no inconvenience in providing the councilor through the exercise of the right of access information on the activity of the natural persons who would have acted as such, including in the in the case of legal entities, the identity of the person representing them.

VI

Meetings with other people to deal with any matter that affects or interests them would be included in the acts or meetings that have as their object actions other than those considered to be typical of the interest groups.

This would include, among others, the meetings held with citizens to deal with matters related to administrative files of a different nature that the City Council may be processing.

Also included would be the actions referred to in article 48 LTC, expressly excluded from the Register of interest groups, that is "related to the provision of legal or professional advice directly linked to defending the interests affected by administrative procedures , those intended to inform a client about a general legal situation, conciliation or mediation activities carried out within the framework of the law, or advisory activities carried out for informational purposes for the exercise of rights or initiatives established by the legal system."

Or the activities referred to in article 7.3 of Decree 171/2015, and which are not considered as belonging to interest groups: "activities carried out by corporate administrations within the framework of the public functions attributed to them by legal system and those carried out by workers' unions and business associations in defense and promotion of their own economic and social interests".

The fact that the LTC excludes this type of action from registration in the Register of Interest Groups, and therefore from the obligation to publicize these meetings, does not imply that in certain cases it cannot be justified, to provide a councilor with information about the people who could have met with the Mayor in the framework of actions specific to a certain administrative procedure through the exercise of the right of access.

In this case, however, indiscriminate access to the meetings held by the Mayor in the last three months is requested. The councilor himself, in showing his disagreement with the City Council's response, points to the fact that the Agenda published on the corporation's website only refers to the fact that a meeting has been held with a company, entity or neighbor without specify who it is or the reason for the meeting.

To warn that legal persons are excluded from the scope of protection of the data protection regulations, as specified by the RGPD itself, by establishing that ... This Regulation does not regulate personal data relating to legal persons and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details." (Recital 14). Therefore, from the perspective of the right to data protection, there should be no impediment to providing information on the name of the legal persons or entities with which the Mayor has been able to hold meetings, regardless of whether they be considered interest groups or not.

Having said that, the assessment that needs to be made is with respect to access to information about the physical persons attending the meetings, in the name and representation of these legal persons (companies, entities, associations, etc.), and about the persons physical persons attending events or meetings in their own name and given that the impact on the privacy of people is different, it is necessary to distinguish one case from the other.

With regard to the meetings held with people who act on behalf and representation of legal entities, it should be borne in mind that providing information about their identity would in principle affect the professional or work sphere of these people.

Despite this, it cannot be ruled out that the knowledge of the participation of certain people in these events or meetings may end up revealing data included in the special category of data referred to in article 9 RGPD. This could happen, for example, in the event that the meeting was held with representatives of a trade union, of a political party, with members or representatives of a religious denomination, with representatives of associations of patients with some particular disease or of people suffering from disabilities, or with representatives of groups of a particular sexual orientation. In these cases, it would be necessary to provide the information without identifying the people involved, which could be done by providing exclusively the reference of the entity, association or collective in question, unless the express consent of the interested parties is obtained or it is data made manifestly public by the interested parties themselves (cases foreseen in article 9.2 a) i) RGPD).

Beyond these cases, it should be borne in mind that the scope of municipal jurisdiction is broad and can affect matters of a very diverse nature. Thus it could be matters related to contractual, urban planning, subsidy activity, or even with sanctioning files maintained with the Administration, and therefore, among these people there may be positions of the same companies or entities, but it could also have lawyers or external advisers hired by companies to solve a specific file.

The truth is that, in order to carry out a control and inspection of the actions of the Mayor through access to her agenda, it seems that it could be sufficient to know what the society or entity is and the matter or the reason for the meeting. The legal person is the one who must be considered interested in these cases. With this information, an assessment can be made of the matters or files in which the Mayor has intervened during the last three months, and in accordance with the principle of minimization, we understand that the name and surname could be omitted from this list of the specific person attending on behalf and representation of these companies.

All this, without ruling out that once this list has been obtained it may be relevant in certain cases to know who is the person who has met with the Mayor to deal with a specific matter on behalf and on behalf of the legal entities affected. Assumption that could force a different weighting.

With regard to access to information about the Mayor's meetings with natural persons acting in their own name, it should be borne in mind that providing information about who these persons are and the reasons for the meeting would imply an interference in the privacy of the participants which will affect to a greater or lesser degree depending on the matter in question.

In this sense, within the variety of specific matters or files, it cannot be ruled out that the information may reveal data included in the special category of data of Article 9 RGPD (e.g. a meeting held in the context of a grant file in disabled people), or referred to the commission of administrative infractions as it is a disciplinary file.

Be that as it may, in this case a generalized and indiscriminate access is being requested to all the meetings held by the Mayor in order to exercise the functions attributed to the councilor and without specifying specific reasons to justify the invasion of privacy that would entail the councilor's access to the identity of all the people, probably residents of the municipality, who had met privately with the Mayor during the last three months.

In fact, the councilor himself assumes that information can be provided to him while maintaining the anonymity of natural persons who, in their own interest and representation, have met with the Mayor in a private capacity to discuss matters related to specific administrative files. Therefore, it does not appear that he may have a specific interest in obtaining said information.

For all this, and in application of the minimization principle, it would be necessary to provide information on this type of meeting in an anonymized manner.

Point out that in order for anonymization to be considered sufficient for the purposes of data protection legislation, it is necessary to ensure that the information provided cannot be related to an identified or identifiable natural person. In this sense, it would be necessary to remove from the requested list, not only the names and surnames of the people who held these meetings, but also

that information about the file or matter that motivates it that may relate directly or indirectly to the affected person.

conclusion

Data protection regulations would not prevent access to information about meetings held by the Mayor with other public officials, specifying the position and the reasons for the meeting. Nor would it prevent access to the meetings held within the framework of the actions of the people considered as interest groups for the purposes of the transparency legislation, including in the case of legal persons, the identity of the natural person who represents them.

The information on the acts or meetings held with third-party natural persons acting on behalf and representation of legal persons, for purposes other than those of the interest groups, should be provided omitting the identity of the specific person who represents them .

Information about meetings held with third-party natural persons acting on their own behalf should be provided in an anonymized manner.

Barcelona, September 26, 2019