

Ref. : IAI 47/2019

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 council for the denial of access to information on immovable property exempt from paying IBI, of a municipality.

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 Provincial Council for the denial of access to the information on the immovable property exempted from the payment of the IBI, of a municipality.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the Legal Advice I issue the following report:

Background

1. On August 6, 2019, a citizen submitted a claim to the GAIP against a deputation for the denial of access to information on immovable property exempt from the payment of IBI.

The claim is accompanied by a letter addressed to a city council in which it requests that the following information be provided, in relation to the owners of properties, plots and buildings that do not pay the IBI:

- 1. Number of properties, lots and buildings that do not pay IBI**
- 2. Description and address of each property, lot or building.**
- 3. Owner or owners thereof.**
- 4. Reason for not paying IBI, individualized for each of them.**
- 5. Value or quota that is no longer collected referring to each of them.**

Also attached is a report from the Council's Tax Management Body, dated May 29, 2019, in which it is stated that the City Council transferred the aforementioned request. This report analyzes the applicable regulations and concludes that in application of the General Tax Law, the only information that can be provided to the interested party is the number of exemptions granted for the 2019 financial year and the amount total of the full quotas that these exemptions have entailed.

2. On August 21, 2019, the GAIP requires the applicant to provide a copy of the disputed resolution, or otherwise of the request for information presented to the Provincial Council that certifies the effective presentation and the date of presentation, and the interested party responds that he does not have the documentation given that it was derived from the City Council.

3. On October 14, 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 information public and good governance, 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.

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

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".

The information related to immovable property exempt from paying IBI is public for the purposes of article 2.b) of the LTC and, therefore, remains subject to the right of access (art. 18 of the LTC). This

right, however, is not absolute and can be denied or restricted for the reasons expressly established in the laws.

Specifically, article 21.2 LTC establishes that "the right of access to public information can also be denied or restricted if the information has the status of protected and this is expressly established by a rule with the rank of law".

III

The object of the claim is access to the list of urban or rural immovable property exempt from paying IBI. Specifically, the access request required information on the amount of properties, lots and buildings exempt from the payment of IBI, the description and address, the owner or owners, the legal reason for exemption, the value or amount that each property would have to pay if it were not exempt.

This Authority has pronounced on previous occasions on access to information related to municipal tax exemptions (among others, the IAI report 28/2018 and more recently the reports IAI 6/2019, IAI 7 /2019, IAI 8/2019, IAI 9/2019 and 28/2019, IAI 33/2019 and IAI 34/2019), whose legal considerations are fully applicable to the case at hand.

Article 60 of Royal Legislative Decree 2/2004, of March 5, which approves the Revised Text of the Local Finance Regulatory Law (LRHL) defines the IBI as "a direct tax of a real nature that taxes the value of real estate". The taxable event of the IBI is the ownership of rights on rural and urban immovable property (art. 61.1 LRHL) and are liable subjects, as taxpayers, natural and legal persons and the entities that hold the ownership of the right that, in each case, and under the terms of Law 58/2003, of December 17, General Taxation (LGT), is constitutive of the taxable event of this tax (art. 63 LRHL).

Article 62 of the LRLH regulates the different cases of tax exemption, distinguishing between those that enjoy automatic exemption (for example, those that are owned by the State, the Autonomous Communities or the Entities Local, directly related to public safety and educational and penitentiary services, as well as those of the State related to national defense (art.62.1.a)), and those that require prior application (e.g. real estate that are intended for teaching by private teaching centers hosted, in whole or in part, in the educational concert regime, while maintaining their status as fully or partially concerted centers (article 62.2.a)), or the immovable property declared expressly and individually monument or historical garden of cultural interest, by means of Royal Decree, and registered in the General Register as members of the Spanish Historical and Artistic Heritage and that meet certain characteristics (art. 62.2. b)).

Section 3 of this same precept provides that the fiscal ordinances may regulate an exemption in favor of the assets owned by publicly owned health centers, and section 4 empowers the Town Councils to establish, for reasons of criteria of efficiency and economy in the collection management of the tax, the exemption of rural and urban properties when the liquid quota does not exceed the amount determined by the fiscal ordinance.

Thus, the management and collection of the IBI requires the processing of data and information of various kinds, among others, personal data of the liable taxpayers.

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), extends its scope of protection to personal data understood as all information about an identified or identifiable natural person, and considers an identifiable natural person "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, como por ejemplo a number, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person" (Article 4.1 of the RGPD).

Therefore, the data of legal entities are excluded from this scope of protection, as specified by the RGPD itself, by establishing that "the protection granted by the present Regulation must be applied to natural persons, regardless of their nationality or your place of residence, in relation to the processing of your personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details. (Recital 14).

Point out that the information requested can only affect the right to the protection of personal data to the extent that the information related to access allows these people to be identified directly or indirectly.

As stated in recital 26 of the RGPD, "to determine whether a natural person is identifiable, all means, such as singularization, that can reasonably be used by the person responsible for the treatment or any other person to identify directly or indirectly to the natural person. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment like technological advances."

For these purposes, it should be borne in mind that the domicile or address of the property constitutes location data and it cannot be ruled out that through this data it may end up identifying the persons who own the property on which the request is made information Access to this information placed in relation to the rest of the data requested (exemption data on a certain tax), would mean the transfer of data of a tax nature to third parties.

The additional provision first paragraph second of the LTC, provides that "access to public information in the subjects that have established a special access regime is regulated by their specific regulations, with a supplementary character, by this law."

In tax matters, article 95 of the LGT establishes the reserved nature of information of this nature and regulates the different cases of exception to this limitation:

"1. The data, reports or antecedents obtained by the tax administration in the performance of its functions are reserved and can only be used for the effective application of the taxes or resources whose management is entrusted and for the imposition of the sanctions that are appropriate, without being able to be assigned or communicated to third parties, unless the purpose of the assignment is:

a) The collaboration with the jurisdictional bodies and the fiscal ministry in the investigation or prosecution of crimes that are not prosecuted only at the instance of the injured person. b) Collaboration with other tax administrations for the purposes of compliance with fiscal obligations within the scope of their powers. c) The collaboration with the Labor and Social Security Inspection and with the managing entities and common services of the Social Security in the fight against fraud in the quotation and collection of the Social Security system quotas and against fraud in obtaining and enjoying benefits provided by the system; as well as for the determination of the level of contribution of each user in the benefits of the National Health System. d) Collaboration with public administrations to combat tax crime and fraud in obtaining or receiving aid or subsidies from public funds or from the European Union. e) The collaboration with the parliamentary commissions of investigation in the legally established framework. f) The protection of the rights and interests of minors and incapacitated persons by the jurisdictional bodies or the fiscal ministry. g) The collaboration with the Court of Auditors in the exercise of its supervisory functions of the State Tax Administration Agency. h) The collaboration with judges and courts for the execution of firm judicial resolutions.

The judicial request for information requires an express resolution in which, with the prior weighting of the public and private interests affected in the matter in question and due to the fact that the other means or sources of knowledge about the existence of assets and rights of the debtor, the need to request data from the Tax Administration is motivated. i) The collaboration with the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offenses, with the Commission for Monitoring Terrorism Financing Activities and with the Secretariat of both commissions, in the exercise of their respective functions. j) The collaboration with bodies or entities under public law in charge of the collection of non-tax public resources for the correct identification of those obliged to pay and with the General Directorate of Traffic for the practice of notifications to them, addressed to collection of these resources. k) The collaboration with the public administrations for the development of their functions, with the prior authorization of the tax payers to whom the data provided refers. l) The collaboration with the General Intervention of the State Administration in the exercise of its control functions of economic and financial management, the monitoring of the public deficit, the control of subsidies and public aid and the fight against delinquency in the commercial operations of public sector entities. m) The collaboration with the Asset Recovery and Management Office through the transfer of the data, reports or background necessary to locate the seized or confiscated assets in a criminal proceeding, with the prior accreditation of this circumstance."

These are taxed cases of transfer of data to other administrations or authorities for the exercise of the respective powers, and which are formulated in a restrictive way, and the possibility of transfer to individuals is not foreseen.

Paragraph 3 of article 95 LGT reinforces this prohibition when it states that "the tax administration must adopt the necessary measures to guarantee the confidentiality of the informatio

tributary and its appropriate use", and that "all authorities or officials who have knowledge of these data, reports or antecedents are obliged to the strictest and complete secrecy with respect to them, except in the cases mentioned. Regardless of the criminal or civil responsibilities that may result, the breach of this particular duty of secrecy is always considered a very serious disciplinary offence.

The IBI is managed on the basis of the information contained in the cadastre as well as the other documents on the variations drawn up for this purpose by the General Directorate of the Cadastre (article 77.5 L). The incorporation of real estate into the Real Estate Register entails the assignment of a cadastral value (taxable basis of the IBI).

This inclusion in the Cadastre is mandatory, in accordance with article 11 Royal Legislative Decree 1/2004, of March 5, which approves the revised text of the Real Estate Cadastre Law (hereafter LC), and can produce through any of the procedures provided for in section 2 of this precept, at the request of the holders themselves (in the case of declarations by the interested parties or communications by notaries or registrars, or deregistration requests), or ex officio (in the case of amendment of discrepancies and rectification, cadastral inspection, or valuation).

In accordance with article 51 of the LC, "For the purpose of the provisions of this title, the name, surname, company name, identification code and address of those who appear registered in the real estate cadastre as owners, as well as the cadastral value and the cadastral values of the land and, where appropriate, of the construction of the individualized real estate."

Article 10 of the LC provides that cadastral holders have the rights recognized in article 34 of Law 58/2003, of December 17, General Taxation, with the specialties provided for in this Law.

Article 95 LGT and the reservation obligation it imposes is the correlate of the right to confidentiality recognized by article 34.1.i) of the LGT to all taxpayers, whether natural or legal persons. According to this precept, taxpayers have, among others, the "Right, in the legally provided terms, to the reserved nature of the data, reports or records obtained by the tax administration, which can only be used for the application of the taxes or resources whose management is entrusted and for the imposition of sanctions, without them being transferred or communicated to third parties, except in the cases provided for by law".

From the above, it follows that by application of the LGT, the personal data that must be processed by the City Council as responsible for the management of the IBI are reserved and can only be the subject of communication in the cases that it specifies the LGT itself, in a taxed form, which are exceptions to the reserved nature of data or information of tax importance.

On the prevalence of the specific regulation in tax matters, in relation to the general transparency legislation, the National Court has pronounced in the sentence SAN 251/2017 of February 6, 2017, in the following terms:

"(...)

But it is necessary to determine if the reserved character given by the legislator to the information obtained by the Tax Agency, in article 95 of Law 58/200, should be understood as restricting the right to obtain information on these data.

Law 58/2003 is of the same ordinary rank as Law 19/2013.

It is a restrictive declaration of the right to information that is outside the regulation of Law 19/2013, but that is found in a current Law of the Spanish Legal System, which specifically regulates the tax regime and the obtaining of data of individuals, physical and legal persons, to be able to carry out the function entrusted to the fiscal bodies.

It is in force because it has not been expressly repealed by a subsequent Law, and in principle it does not seem incompatible with the regulation established in Law 19/2013, looking at the First Additional Provision of Law 19/2013, the possible connection to be able to apply this limitation (...)

Therefore, we find that there is a specific and valid regulation, not incompatible with the regulation of the Transparency Law, of access to information that works in the Tax Administration and that will be governed by its specific regulations, and by this Law with character supplementary (...)".

In accordance with article 6.1 of the RGPD, 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). The right of access to public information (article 18 of the LTC) can oblige the Administration to transfer personal data of third parties without the need to obtain their consent.

In this case, however, the reserved nature of tax data and the specific access limitations provided for in article 95 of the LGT, in turn limits the right of access to public information, and therefore, the claimant's access to the address of the properties or any other information that allows the identification of the natural persons who have benefited from exemptions from the IBI, cannot be protected in article 18 of the LTC. Consequently, the claimant's access to the address of the properties together with the rest of the information requested without the express consent of the affected persons would be contrary to article 6.1 of the RGPD, and to privacy expectations of these people.

This, without prejudice to the fact that information can be provided to the claimant on the number of properties that have been exempted, for example, in an aggregated manner, grouping the different legal bases that justify the exemption and the quotas that have been left 'enter as a result of its application, so that the specific person affected cannot be linked.

The principles of data protection apply to any information relating to an identified or identifiable natural person, and as it follows from the RGPD (recital 26), these do not apply to the treatment of anonymous information, that is "information that is not related to an identified or identifiable natural person" nor "to data converted to anonymity so that the interested party is not identifiable, or ceases to be so."

Thus, access to public information prior to anonymization of the personal data contained therein, so that it is not possible to identify the persons affected either directly or indirectly, is an option expressly provided for in article 15.4 of Law 19/ 2013 in establishing the conditions established in the applicable if access is effected prior to the dissociation of personal data in such a way as to prevent the identification of the affected persons."

IV

Finally, remember that according to article 35.2 of the LTC "the right of access cannot be acquired by administrative silence if any of the limits established by this or other laws to have access to public information are met."

CONCLUSION

Access by the person claiming to the information on the identity of the owners, the address of the properties exempted from the IBI or any other information that allows the identification of the natural persons holding rights over these assets, would be contrary to the personal data protection regulations. This without prejudice to the fact that the information can be provided anonymously.

Barcelona, November 5, 2019