

IAI 48/2019

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to a claim filed by a councilor against a City Council for denying access to various municipal information

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 the City Council (...) for denial of access to various municipal information.

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 August 13, 2019, the claimant, who is a councilor of the Municipal Group (...) in the City Council (...), presented two instances in which he requested to review, respectively, " the records of income and expenses, and the invoices corresponding to the last years" and "the register of inhabitants of the municipality (...) of the last year".**
- 2. On August 22, 27 and 29, 2019, the councilor, through the corresponding bodies, reiterates the request for information made on August 13, 2019, given the lack of response from of the council**
- 3. On August 30, 2019, the councilor presented an instance in which he requested to review "the record of approval of the register corresponding to the garbage collection rate corresponding to the 1st semester of 2019".**
- 4. On September 5, 2019, the Mayor of the City Council (...) issued Mayoral Decree no. 83/2019 granting the councilor access to "the register approval file corresponding to the garbage collection rate corresponding to the 1st semester of 2019".**
- 5. On September 10, 2019, the councilor presented two instances in which he requested, respectively, that he be informed about "the existence of some agreement with (...), referring to the transfer of climbing wall" and that he be given "the list of jobs approved by the City Council (...) and the functions that each worker must perform".**
- 6. On September 12, 2019, the councilor presented seven instances in which he requested:**
 - a) "How many hours does each employee of the City Council currently work during the week, regardless of whether they are civil servants, permanent or temporary" and "what are the hours of these workers "distributed by the days of the week".**

- b) "Review (and obtain a copy of) the file corresponding to the last register of the rates of sulphating water" and "the date" on which it was approved by the Local Government Board.
- c) "Review (and obtain a copy of) the file corresponding to the last record of drinking water consumption (...) corresponding to the second quarter of 2019, related by streets, names and consumptions", "the date" in which was approved by the Local Government Board and "a list of all the meters that enjoy the exemption or bonus of the water canon fee".
- d) "Copy of the data from the last register of ford rates", "the date" on which it was approved by the Local Government Board and information on "if all the residents who have requested the ford are to the current payment of the aforementioned fee".
- e) "Review (and obtain a copy) the file corresponding to the last sewer register (...) corresponding to the second quarter of 2019, related by streets, names and consumptions" and "the date" on which it was approved by the Local Government Board.
- f) "Review (and obtain a copy of) the file corresponding to the latest register of cemetery conservation fees" and "the date" on which it was approved by the Local Government Board.
- g) "Copy of the documents corresponding to the following records:
 - At the entrance:

Reg. entry no. 3 of 08/01/19.
Reg. entry no. 492 of 09/10/17.
Reg. entry no. 203 of 24/04/2017.
Reg. entry no. 249 of 11/05/17 (With its corresponding answer).
 - Departure:

Reg. exit no. 435 of 16/10/17.
Reg. exit no. 13 of 11/01/19."

7. On September 13, 2019, the councilor presented an instance in which he agreed that "the file relating to the register of the garbage collection fee" delivered on September 12, 2019 for review it was not fulfilled, so it requested its delivery again.

8. On September 16, 2019, the councilor presented an instance in which he requested "the registration of Mayor's Decrees, and a copy of those, which, once reviewed, are of my interest".

9. On September 17, 2019, the Mayor of the City Council (...) issued Mayoral Decree no. 88/2019 denying access to the information related in points 5, 6, 7 and 8 above, considering that the councilor is making abusive use of the right to information and, specifically in relation to the information on the different registers fiscal, to deal with information of a tax nature.

10. On October 4, 2019, the councilor presented to the GAIP claim 637/2019 against the City Council (...), for the denial of access to the various tax registers approved by the Local Government Board, which he considers necessary for the correct performance of his task as councilor of the City Council.

11. 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 public information and good governance, in relation to the claim presented by the councilor of the City Council.

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.

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

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. "

In the case at hand, the claimant has the status of a councillor, which means that the provisions established by the local regime legislation are applicable, fundamentally, Law 7/1985, of April 2, regulating of 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), with regard to the Councilors' access to municipal information.

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

III

As this Authority has done on previous occasions (among others, the IAI reports 34/2017, IAI 45/2017, IAI 23/2018, IAI 24/2018 or IAI 2/2019, which can be consulted on the web

<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 March 29, 2006).

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 aforementioned 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 (sections 2 and 3), establishes, as a possible basis for denying the request with reasons 'information, that "the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or (section 3, letter a)), but obviously access could also be denied when other fundamental rights may be affected such as the right to the protection of personal data (Article 18.4 EC).

Given that the exercise of the councilor's right of access could lead to a limitation of the fundamental right to the protection of personal data, it will be necessary to determine whether it is a proportional limitation, given that, according to repeated doctrine of the Constitutional Court, the limitation of fundamental rights can only occur proportionately (SSTC 11/1981, 57/1994, 66/1995, 11/2006, 206/2007, among others).

It is therefore necessary to examine the circumstances and terms of the requests that the councilor has presented to the City Council, the intended purpose, the possible people affected and, especially,

there is personal data and if this information is necessary to achieve said purpose or requires special protection.

IV

As can be seen from the antecedents of this report, the person making the claim has submitted several requests to the City Council requesting access to various municipal information. In specific:

- a) Income and expenditure statements, with the corresponding invoices from recent years.
- b) The Municipal Register of Inhabitants of the last year.
- c) The agreement (...) on the transfer of the climbing wall.
- d) The list of City Council jobs, with an indication of the tasks entrusted
- e) The working day and schedule of municipal public workers.
- f) The files relating to the approval of the register of the municipal fees for garbage collection, water for sulphating, consumption of drinking water, ford, sewerage and cemetery.
- g) Certain documents from the Entry and Exit Register.
- h) The register of Mayor's Decrees and copies of those that are of interest to you.

Despite this, the object of the claim presented to the GAIP by the person making the claim is the denial of access to the files of the tax registers corresponding to the municipal fees for garbage collection, for sulphating water, for consumption of drinking, ford, sewer and cemetery water (letter f)).

This is clear from the statements made by the councilor in his claim, in which he states that "as a councilor of the town hall, I believe that I have the right to review and request a copy of the different registers that the JGL has approved, but that I are systematically denied."

The denial of access to this information is based on Mayor's Decree no. 88/2019, attached to the file, in the fact that it is information of a tax nature and that, in accordance with the criteria maintained by the Spanish Data Protection Agency, access to information of this nature.

It is necessary to assess, therefore, whether the fundamental right to the protection of personal data would justify or not the limitation of the right of access of the person making the claim (Councillor) with regard specifically to the different files of the tax registers of the rates quoted.

v

In view of the provisions of the Revised Text of the Local Taxes Regulatory Law, approved by Royal Legislative Decree 2/2004, of March 5 (hereinafter, TRLRHL), on local taxes and, specifically, on the establishment of fees (article 20 et seq.), it can be understood that the City Council processes certain information of natural persons who are liable to pay taxes in relation to the management, settlement and collection of garbage collection fees, waste water sulphating, consumption of drinking water, ford, sewerage and cemetery, which are local entity taxes (article 2.1.b) TRLRHL and article 105 et seq. LRRL).

Thus, the City Council could process identification data of liable tax subjects (name, surname, ID, telephone, tax and tax address) and other types of data, such as, among others, tax and economic information (tax data), bank details, etc.

To this it should be added that, in the context of the management of the aforementioned fees, treatment by the City Council cannot be ruled out, taking into account, where appropriate, the type of exemption and/or bonus established in the levy of the rate in question, of data deserving of special protection (Article 9 RGPD) or, at the very least, of information deserving of a special reserve or confidentiality, being able to reveal the existence of situations.

These circumstances could act as a limit to the councilor's right of access to this type of information linked to the management of the tax registers, in the event that the relevance of the specific identification of the subjects required for the exercise of the functions attributed to him as an elected office.

In any case, it is necessary to take into account the special treatment provided by the regulations regarding personal tax data.

Article 2.2 of the TRLRHL, provides that "for the collection of taxes and amounts that as public law revenues, such as non-taxable public property benefits, public prices, and fines and pecuniary sanctions, the hacienda must receive of the local entities in accordance with the provisions of the previous section, said Hacienda will hold the legally established prerogatives for the State Treasury, and will act, as the case may be, in accordance with the corresponding administrative procedures."

The local tax authorities have, for the collection of taxes and other revenues under public law, the same prerogatives that Law 58/2003, of 17 December, General Taxation (hereinafter, LGT) attributes to the State Treasury.

Specifically, with regard to the data and information obtained by the Municipal Treasury, article 95.1 of LGT provides that:

"1. The data, reports or antecedents obtained by the tax administration in the performance of its functions are reserved and may only be used for the effective application of the taxes or resources whose management is entrusted to it and for the imposition of the penalties that apply, without may be transferred or communicated to third parties, unless the transfer is for the purpose of: (...)

3. The tax administration will adopt the necessary measures to guarantee the confidentiality of tax information and its appropriate use. Any authorities or officials who have knowledge of these data, reports or antecedents will be obliged to the strictest and most complete secrecy regarding them, except in the cases cited. (...)."

In this way, by application of the LGT, the personal data processed by the City Council, in relation to the management of the fees, are reserved in nature and can only be used for their effective imposition. It is clear, therefore, that the applicable regulations protect certain information related to tax payers and conditions its access and treatment for certain purposes.

Although this article 95 of the LGT establishes the prohibition to communicate information of a tax nature to third parties other than those established in its section 1, it should be remembered that councilors are an integral part of the City Council (article 19.1 LRBRL), for which are not properly a "third party" in the relationship between the interested party (the natural person holding the data) and the City Council itself.

On the other hand, it is necessary to take into account the terms in which the councilor requests access to this type of information.

At this point, it should be remembered that the local regime legislation does not require elected officials that, in order to access the information held by the corporation, they must explain or justify the purpose of their request, given that the reason for their request must be understood as implicit in the exercise of said control and inspection functions.

However, it must be taken into consideration that, in the present case, the councilor states in his claim before the GAIP that "as a councilor of the City Council (...) I have requested on several occasions to review certain files (especially registers), so I detected irregularities in the first one I reviewed. Since I think they may have occurred in other patterns, I wanted to verify (...)".

The first record file that he mentions in his claim would be the one relating to the rate corresponding to the collection of garbage for the first semester of 2019, as the councilor himself will later say.

In the letter presented on September 17, 2019 to the City Council, attached to the file, the councilor alleges certain irregularities in the processing of the file corresponding to this tax register: revision of the register carried out by the Board of Governors Premises out of time, practice of notifying affected neighbors out of time, start of charging the fee before final approval of the register, etc.

From these manifestations it can be understood that the access to all the files of the tax registers referred to the rest of the municipal rates (those relating to the rate of sulphating water, drinking water consumption, ford, sewerage and of cemetery) requested by the councilor is a consequence of the finding of anomalous or irregular situations in the processing of this first file by the Local Government Board.

It can be understood, therefore, that the requests for access to the files of tax registers of the mentioned rates would be related in this case to the control of the municipal action in the field of tax management, in order to be able to detect if the processing of these files complies with the provisions of the applicable legislation (TRLRHL and the respective fiscal ordinances).

From this perspective, it can be said that access to said information would be part of the legitimate functions of control and inspection legitimately attributed to the councillor.

However, in accordance with the principle of data minimization (Article 5.1.c) RGPD), this access must refer only to the personal data that are necessary to satisfactorily respond to this legitimate right of access of the councilor .

The requests presented by the councilor focus on the tax registers, in which the liable taxpayers, the taxable bases or, in their case, the liquidated ones and the tax quota to be paid by them, will be identified.

These are, in any case, general access requests, that is to say, it is intended to access all the information contained in each of these registers and with respect to all the required subjects. As we have seen, information of a tax nature but also, it must be remembered, that could reveal other data deserving of special protection, in view of the type of exemption and/or bonus established in the collection of the fee.

An example of this situation could be given, at the very least, in the case of the fiscal register relating to the drinking water consumption rate. The councilor requests access to this register related to "streets, names and consumptions", stating "all the meters that benefit from the exemption or bonus of the water canon fee".

Taking into account the statements made by the councilor about possible irregularities in the file corresponding to the garbage collection fee that he holds would have resulted in "discrepancies between what was definitively approved and the receipts put to collection", it cannot be ruled out that the specific purpose intended by the councilor with these requests is to be able to check whether the appropriate calculation has been carried out in each case, for the purposes of calculating the quotas to be met by the obliged subjects.

That being the case, it does not seem necessary or relevant, for this purpose, to know the identity of the persons liable in relation to each municipal tax.

For this reason, in the present case the information should be given to the councilor in an anonymized manner (consideration 26 RGPD), that is to say, without including data that could relate to an identified or identifiable natural person.

It must be taken into account that an identifiable natural person is considered "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, for example 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) RGPD).

Therefore, the information to be given to the councilor should not include data that allows the direct identification of the obliged subjects (for example, first and last names) or their indirect identification (for example, the address).

This without prejudice to the fact that, if the intended purpose of the councilor went beyond this mere control over the amounts established by the Local Government Board, it could be justified to provide him with specific information from the tax registers relating to certain obliged persons, if necessary for the exercise of its functions of inspection and control of the municipal action or others that may be attributed in the terms provided for in the LRBRL.

It would be convenient, for this purpose, for the councilor to specify in relation to which people he requires the information contained in the tax registers and the relevance of this information to achieve the control functions attributed to him. Especially, in those cases where the request could involve revealing data deserving of a special reservation or

confidentiality, in consideration of the type of exemption and/or bonus established in the collection of the fee in question.

Beyond that, taking into account the purpose of the access, the terms of the requests and the special reservation imposed by the regulations applicable to this type of information, it does not seem that a generalized access of the councilor to the fiscal registers corresponding to the municipal fees for garbage collection, sulphating water, consumption of drinking water, ford, sewer and cemetery, identifying the people affected.

VI

In the request for access to the file of the tax register relating to the ford fee, the councilor also requests to know "if all the neighbors who have requested the ford are aware of the payment of the aforementioned fee" , so it seems that, in this specific case, the councilor wants to have a relationship between the debtors and the City Council for this concept.

As we have seen, the Plenary of the corporation is assigned, among other functions, the control and supervision of the governing bodies (article 22.1.a) LRBRL).

In budgetary matters, the Plenary is responsible for approving the budget and its modifications (article 22.2.e) TRLRHL and articles 167 and 169 TRLRHL). Throughout the budget year and in compliance with the provisions of article 207 of the TRLRHL and rules 105 and 106 of the Instruction of the simplified model of local accounting (ICAL), within the following quarter, after the accrual of each calendar quarter , the General Comptroller must send to the Mayor's Office or the Presidency of the Economic Information Commission, which will report to the Plenary, information on the execution of budgets and the movement of the treasury and independent and auxiliary budget operations . Specifically, and with regard to the state of income, this information must provide the amounts corresponding to the initial income forecasts, their modifications, and the final forecasts and recognized net rights, as well as the net collection.

The Plenary is also responsible for approving the corporation's General Account, drawn up by the Comptroller and subject to a report by the entity's Special Accounts Committee, made up of members of the corporation's various political groups (article 212.4 TRLRHL). The general account reflects the economic, financial and patrimonial situation, the economic and patrimonial results, and the execution and liquidation of the budgets.

In the context of the withholding of public accounts, it should be noted that said information could be requested by councilors within the Special Accounts Committee, through articles 212.2 of the TRLRHL and 58 of the TRLMRLC, but also through article 212.4 of the TRLRHL in relation to article 77 of the LRBRL.

For the exercise of the functions of control and inspection of the governing bodies, in relation to the role of political control that the regulations attribute to the Plenary of the corporation, to whom it corresponds, in the last instance, the approval of the general account, the councilors must be able to dispose of the information, data, accounting documentation and justification of the different statements of accounts that will allow them to evaluate what has been the action of the municipal administration regarding, in this case, the rights recognized in favor of the corporation that a

The purpose of the councilor's access to the requested information (toll fee debtors) would be to control the administrative action in the field of management and collection of recognized rights in favor of the corporation, in order to be able to detect if any irregularity has occurred in the scope of this activity.

It must be taken into account that the actions of the governing bodies and the municipal administration in matters of management and collection of public revenues directly affect the execution of the revenue budget and the general statement of accounts, and the result of this action has an impact on the budgetary, economic and financial situation of the corporation.

From this perspective, access to the requested list of debtors would be part of the legitimate functions of control and inspection legitimately attributed to the councilor (article 22.1.a) LRBRL).

A certain evaluation of the administrative action regarding the management and collection of these debts relative to the ford fee, in terms of effectiveness and results, could be done a priori without having to have generalized access to the detail of said list of debtors (name and surname, concept and amount).

However, if what is intended is to have information that allows to verify whether possible anomalous or irregular situations have occurred in the process of managing and collecting this fee with respect to certain people, it is necessary to determine to what extent it would be justified this type of access.

In this sense, it can be said that access should be considered with respect to those people with overdue and enforceable debts, whether they are under enforcement or not (due to inactivity of the administration), including uncollectibles and those who have been extinguished by prescription or by the concurrence of any other cause of extinction. In these cases, it may be relevant, for the purposes of controlling any irregularities produced in the tax collection procedure, to know not only the amount of the debt but also the identity of the debtor. Therefore, it would be necessary to admit the councilor's access to this type of information.

On the other hand, it does not seem that it would be justified to hand over the identity of the holders of debts that are in a period of voluntary payment or in respect of which the holder has requested to postpone or split the payment, under the protection of the provisions of the articles 65.1 of the LGT and 44 of Royal Decree 939/2005, of 29 July, which approves the General Collection Regulation, or the rest of the applicable regulations.

These cases would form part of the ordinary collection activity of the administration and it is not appreciated that knowing the identity of the people who find themselves in these situations is relevant for the purpose of controlling any irregular actions by the administration

In these cases, the option of handing over the different amounts would be appropriate, without providing the identity of the holder.

conclusion

Taking into account the purpose of the access, the terms of the requests and the special reservation imposed by the applicable regulations, a generalized access by the councilor to the fiscal registers corresponding to the municipal garbage collection fees cannot be admitted, of sulphating water,

drinking water consumption, ford, sewer and cemetery, as requested. This, without prejudice to being able to give you the information in an anonymized way.

The right to data protection would not prevent the councilor from accessing information about people with overdue and payable debts linked to the ford fee, whether or not the executive process for their collection has been initiated, including uncollectibles and those that have become extinct.

Barcelona, October 28, 2019

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