

Ref. AJ: IAI 49/2019

**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 professional association for the denial of access to information on professional contact details, including email and fax of a member.**

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 (...) presented by a citizen against a school professional in relation to the denial of access to information on professional contact details, including e-mail and fax of a collegiate person.

After analyzing the request, which is accompanied by a copy of the administrative file processed before the GAIP, the Legal Counsel issues the following report:

#### **Background**

- 1. On August 12, 2019, a citizen submits a letter to a professional association requesting information on the professional contact details, including email and fax, of a member of the association.**
- 2. On September 24, 2019, the interested party filed a complaint with the GAIP alleging that the professional association did not provide him with all the information. In this letter, the claimant reiterates his request.**
- 3. On October 2, 2019, the GAIP requested a report from the professional association in relation to the claim presented.**
- 4. On October 15, 2019, the professional association presents the required report.**
- 5. On October 17, 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

(...)

II

The claimant requests the professional contact details, including email and fax of a colleague.

Article 3.1.b) of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) includes in its scope of application, among others, "(...) professional associations and corporations under public law in what affects the exercise of their public functions".

Law 7/2006, of May 31, on the exercise of qualified professions and professional associations (hereinafter Law 7/2006), provides that professional associations "in their capacity as public law corporations and in the scope of their public functions, they act in accordance with administrative law and exercise the powers inherent in the public administration" (article 66.1).

In this case, the information requested by the claimant is included within the concept of public information in the aforementioned article 2.b) of the LTC, and therefore remains subject to the access regime provided for in the transparency legislation.

Some of the requested data is contained in the register of members that the regulatory regulations of professional associations oblige them to carry and disseminate through the single window. With the collection and publication of this information, the regulations governing professional associations want to protect a general public interest such as guaranteeing the best defense of consumer and user rights given the public functions entrusted to them. Thus, the Register of members is one of the material areas of the activity of public law corporations to which the right of access to public information can be applied given its link with the public functions entrusted to them .

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 2.b) of the LTC defines public information as "the information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions, including the one supplied by the other obliged subjects in accordance with the provisions of this law". Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

According to article 18 of the LTC "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legal entity legally constituted." And the exercise of this right "is not conditional on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of any rule".

However, the LTC itself establishes that, in those cases in which the public information that is sought to be accessed contains personal data (as happens in the case examined), for the purposes of granting or denying access, it will be necessary to have taking into account the limits established in articles 23 and 24 of the LTC.

### III

Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, in article 40 bis 2.a) provides:

"In any case, the professional associations must guarantee access through a single window to the following information: a) Access to the register of members, which must be updated, in which the following information is recorded : first and last names of registered professionals, registration number, official titles, professional address."

State Law 2/1974, of February 13, on professional associations, in the wording given by Law 25/2009, of December 22, in its article 10.2.a) is pronounced in the same sense.

According to the above, it is agreed that certain data of the registered professionals, in particular, the data that form part of their Register of registered users relating to the name, surnames, registered number, official titles, professional address and professional qualification status (whether or not he is qualified to practice the profession) must be disseminated by the professional associations through their single window, which means that anyone can have access to it.

Thus, with respect to this personal information, which the College is obliged to make public in the single window, anyone can have knowledge of it. Consequently, from the point of view of data protection, there would be no impediment to being able to deliver this information, unless, with regard to the specific person affected, there is a special circumstance that prevents its disclosure.

For these purposes, it should be borne in mind that in accordance with articles 31.1 and 42 of the LTC, the affected person should be given a hearing, either by the College, during the processing of the access request, or by the GAIP during the claim procedure, so that it can be known if there is a specific personal circumstance that justifies the limitation of the right of access. For these purposes, the GAIP can use the data contained in the file to contact the affected persons or request the College to provide them with the data that can be used to contact them in contact

### IV

Regarding the request for access to the email and fax data of the employee, from the point of view of data protection regulations it is necessary to analyze whether there would be any limitation to take into account with respect to personal information that could be affected by eventual access by the claimant.

Given that the type of information requested does not contain particularly protected data, it is necessary to take into account article 24.2 LTC which provides:

"If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the

disclosure and the rights of the affected persons. To carry out this weighting, the following circumstances must be taken into account, among others: a) The elapsed time. b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people.”

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

It should be noted that the purpose of the transparency law is "to establish a system of relations between people and the public administration and other obliged subjects, based on knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and responsibility in public management" (Article 1.2 LTC).

Having said that, in the absence of information about the specific reason why access is of interest, it could be understood that the purpose pursued would be professional localization. Thus, for the purposes of transparency, it does not seem that there can be any doubts about the relevance that it may have for the citizen to have the information that allows them to get in touch with the registered person. However, the question that must be raised is whether to achieve the purpose of transparency it is necessary to access email and fax data.

In principle, given the purpose pursued by the transparency legislation, which is not the control of the people who relate to the administration but the control of the administration or, where appropriate, the professional associations, it does not seem that the data relating to a professional's e-mail or a professional's fax are information that is essential to be able to control the activity of the college, nor is it essential for the exercise of any right of the applicant person. Therefore, taking into account this circumstance in the weighting that must be carried out in accordance with article 24 LTC, in principle it would seem that there is no justification for handing over these data relating to professional e-mail and fax.

However, with regard to the e-mail data, with the information available, it should be noted that the collegiate person has published on his website the e-mail data linked to his professional activity. Therefore, and to the extent that the e-mail address available to the college matches this one, it must be taken into account that it is the same affected person who has made his contact details publicly available on his professional website, including the claimed email. On the other hand, article 19.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) establishes a presumption of the existence of a legitimate interest with regard to the 'access to the contact details of individual entrepreneurs and liberal professionals. Considering that the architect himself provides the email address as contact information on his website, there does not seem to be any reason to undermine the presumption established in this article. In that

case, the data protection regulations would not be an impediment to give access to the person claiming this data.

Regarding the data relating to the fax, taking into account that the information you claim can only be used for the purpose pursued, specifically, to facilitate professional localization, from the point of view of data protection, to give access to the data of fax, it would not comply with the principle of data minimization, since the right of access requested by the claimant can be satisfied by providing him with the contact details contained in the Member Register and the email published in professional website of the affected person. In this case, from the point of view of data protection, access to the personal fax data of the collegiate person does not seem justified.

v

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

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

#### conclusion

The data protection regulations would not prevent the claimant's access to the requested information, with respect to the professional contact details contained in the Register of Collegiates.

Regarding the e-mail data, given the information available, the data protection regulations would not prevent the claimant from accessing the requested information, since the affected person has clearly made it public. Beyond that, access to the personal fax data of the collegiate person does not seem justified.

Barcelona, October 28, 2019