

Ref. : IAI 50/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against a consortium, for the denial of access to information on the nationalities and languages of the students of a public school.

The Guarantee Commission for the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim (...) against a Consortium, for the denial of access to information on the nationalities and languages of the students of a public school.

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. By means of a letter submitted to a town hall and referred to a consortium, a citizen requests information on the number of students in a school, their nationalities and languages mothers
2. On November 7, 2019, the Consortium decided to partially approve the request in the following sense:
 - The interested party is provided with the number of students by educational level of the center.
 - Access to data on foreign students is denied, according to their nationality, "given that the data can condition school segregation related to academic results and/or social composition, in accordance with the Department of Education's transparency policy."
 - It is reported that no information is available on the students' mother tongue.
3. On November 14, 2019, the interested party filed a complaint with the GAIP against the Consortium for the partial rejection of her request. He explains that he wants to know the nationalities and languages of the school "in order to be able to work from the AMPA on a cultural project of welcome and mutual enrichment. Practical information about the neighbourhood, gastronomic cultural days at the school, etc."
4. On November 22, 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.

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

According to article 18 of Law 19/2014 "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any person legally constituted legal entity" (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 available to the Consortium 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).

Within the different data requested initially, and as can be seen from the resolution of the Consortium, the interested party already has the information on the number of students spread over the different levels of infant and primary education of the school (more than 400).

On the other hand, the Consortium states that it does not have information on the students' mother tongues, and given that it is not possible to provide what is not available, this report will focus on the analysis of the impact it may have from the perspective of the data protection regulations, the access to information on the nationalities of the students claimed by the interested party.

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, personal data is any information relating to a natural, living, identified or identifiable person. The various information collected that can lead to the identification of a certain person also constitute personal data. Thus, a natural person is not considered identifiable if identification requires disproportionate time or activities taking into account costs, time required for identification and available technology.

On the contrary, Recital 26 of the RGPD states that "(...)the principles of data protection do not apply to anonymous information, that is to say to information that is not related to an identified natural person or identifiable, nor to the data converted to anonymity in such a way that the interested party is not identifiable or ceases to be so. Consequently, this Regulation does not affect the treatment of this anonymous information, even for statistical or research purposes."

Thus, from the outset the personal data of the students whose nationality is interested in being affected would only occur to the extent that the information provided allows their identification directly or indirectly, relating it to other information that does so possible

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."

Opinion 05/2014 on anonymization techniques, of the Article 29 Working Group, formulates recommendations for the management of anonymization techniques taking into account the residual risk of identification inherent in them. In this opinion it is made clear that the concept of identification does not only involve the possibility of recovering the name or address of a person, but also includes "potential identifiability through singularity, linkage or inference", that is to say , it is not only about the possibility of direct identification of the person, but also indirect.

In an environment of 427 students, facilitating a relationship with the different nationalities that live together at the school with the number of students in each of them - information that the interested party seems to claim - should not, in principle, affect personal data.

To give an example, and without knowing what percentage of foreign students the school in question may have, given that there are several nationalities, say that the school has x number of students of Spanish nationality, 14 students from nationality A, 12 from nationality B, 10 from nationality C, 11 from nationality D or 9 from nationality E, could not be linked to a specific person. It could be that the person making the claim, as a member of the AMPA and mother of the school, knew some of the foreign students in the centers and what nationality they are. But the knowledge of said information would not derive from the information that is now requested, but would have been obtained by other means.

In the example shown, and to the extent that the levels of aggregation with which the information is provided do not allow the direct or indirect identification of the students, neither would the limitations provided for in articles 23 and 24 of the 'LTC, nor the GDPR.

However, the Consortium, as responsible for the treatment, in the process of anonymizing the data must assess the risks and the possibility of subsequent re-identification of the data holders taking into account the concerted circumstances of each case and, must guarantee the confidentiality of the personal information you have anonymized.

To warn in this sense that it cannot be ruled out that there may be some case in which, depending on the number of students of a specific nationality, there may be a risk of re-identification, even if it is a remote possibility. This is an aspect that the person responsible for the treatment, familiar with the school environment, must assess. It must be taken into account that the person requesting access, as can be seen from their statements, is part of the AMPA, and therefore could relate this information to other information that would allow them to identify one of the students whose nationality would be revealed.

To give an example, let's suppose that there is a student whose physical features may point to his origin in a certain area. It is likely that this fact is known to a large part of the parents and students of the school, including the person making the claim. What is not so clear is that the claimant knows her nationality. Revealing that there is a student of nationality X, would mean in this case providing additional information from which personal information of this student would be revealed, which must not be previously known by third parties and which would allow the identification .

In these cases where there is a risk of re-identification, the information could no longer be used considered anonymized in the terms provided for in the RGPD. This would be personal information of the minor(s) affected, access to which would require prior weighting between the rights and interests at stake, in accordance with the criteria provided for in article 24.2 of the LTC. This precept points out as elements to be taken into account, the fact that it is data relating to minors (circumstance provided for in letter c), as well as the specific purpose that is intended with the access (letter b).

The owners of the data are minors and as such, by application of the legal principle of the best interests of the minor, they deserve special protection. This is recognized by article 21.3 of

the LTC, by providing that it has the status of protected, in all cases, information relating to minors whose knowledge or disclosure may condition the free development of their personality in the future. Access to the information may be denied in this case, unless its anonymity can be guaranteed.

The Consortium bases its resolution on the fact that "the knowledge or disclosure of any information that could lead to the publication of calcifications of centers according to academic results and/or their social composition entails serious damage to the rights of minors 'age, which could harm the enrollment in centers in difficult social contexts, as well as the promotion possibilities of the students of those centers (in accordance with article 21.1 of the LTC and with the transparency policy of the Department of Education.)"

The person making the claim states that he wants to know the nationalities and languages of the school in order to be able to work from the AMPA on a cultural project of welcome and mutual cultural enrichment. For these purposes, it might be sufficient to know which nationalities live together at the school. The exact number of students who are of one or another nationality does not seem a priori indispensable to accomplish the purpose pursued in this case. The principle of data minimization requires that any data processing that is carried out is limited to the minimum data necessary to achieve the intended purpose of this processing (Article 5.1.c) GDPR).

Given the purpose pursued by the claimant in this case, and accepting the arguments presented by the Consortium, the right to privacy of the minors affected is considered to prevail. This is why, for the purposes of data protection regulations, it would be necessary to prevent access to the claimed information from putting at risk the re-identification of any of the affected minors. To avoid this, one could for example, provide only a list of the different nationalities present in the school or, if necessary, include the number of students of the most significant nationalities, omitting the number of those with a small number of members.

In the rest of the cases, the regulations on the protection of personal data would not prevent access by the claimant to the requested information to the extent that no personal data or information that indirectly allows the identification of the data holders is provided.

It does not escape this Authority, however, that providing information on the number of students of the various nationalities who live together in the same school involves providing information that can lead to drawing up a profile of the center based on the nationality of its students and which, consequently, and depending on the number of students it has of one or another nationality, could have a stigmatizing effect on the center, but in any case this matter would escape the scope of the protection of personal data.

CONCLUSION

The regulations on the protection of personal data would not prevent the claimant's access to a relationship with the different nationalities that live together at the school with the number of students from each of them, except in those cases where, based on a risk analysis and in a motivated way there is a risk of identification of the data holders, in which the information can only be delivered in such a way that identification is not possible.

Barcelona, December 4, 2019