

Ref.: IAI 52/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to a claim presented by a Municipal Group for the denial of access to the list of the entry and exit register of documents of the municipal corporation.

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 a claim submitted on July 4, 2019 by a councilor of the Group municipal, against a City Council, for denial of access and consultation of the entry and exit register of documents on a fortnightly basis and in digital format.

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 4, 2019, the claimant, who is a councilor of a municipal group, submitted a letter to a City Council in which he requested a list of the entry and exit register of council documents, with fortnightly and in digital format.
2. On July 17, 2019, the City Council denied the request for access presented by the councilwoman.
3. On November 11, 2019, the councilor submitted a complaint to the GAIP in which he reiterates the request for access to the requested documentation.
4. On November 18, 2019, the GAIP requests the City Council to issue a report in relation to the claim presented. The file addressed to this Authority contains a copy of the Report of the General Secretariat of the City Council, of July 11, on the request for access to information by the Municipal Group.
5. On December 11, 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 issue a report to the Catalan Data Protection Authority, which must be issued within fifteen days.

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

Before analyzing the merits of the claim, it is appropriate to determine the legal system applicable to the request.

The first additional provision, section two, of the LTC 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 person making the claim has the status of a councillor. Therefore, the provisions established by the local regime legislation are applicable, mainly 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 Government Law of Catalonia (TRLMRLC), regarding the access of councilors, county councilors or provincial deputies to municipal information.

This is without prejudice to the fact that the person making the claim 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 other citizens who do not have this condition of elected office, given the supplementary application of the LTC (DA1a.paragraph 2).

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 the 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 its function. The request to exercise the right contained in the previous paragraph must be resolved motivatedly in the five natural days following the one in which it had been presented.”

The TRLMRLC pronounces itself in the same sense 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."

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 one's own image" (section 3, letter a)), but obviously it will also be necessary to take into account other fundamental rights that may be affected by the request for information.

Likewise, from local regime legislation and from the jurisprudence of the Supreme Court, it follows that councilors cannot be required to, in order to access municipal information, explain or substantiate the purpose of their request, since the reason for their request must be understood as implicit in the exercise of their functions as councilors, who are responsible for the control and supervision of the governing bodies of the corporation, as explained in the Article 22.2 a) of the LRBRL.

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 (Article 18.4 CE), it will be necessary to see if it is a proportional limitation, given that, as reiterated doctrine of the Constitutional Court, the limitation of fundamental rights can only occur in a proportionate manner (SSTC 11/1981, 57/1994, 66/1995, 11/2006, 206/2007, among others).

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 control the actions of the corporation, the control, analysis, study and defense of the necessities 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).

For all of this, it will be necessary to examine the terms in which the councilor requests this access in order to facilitate the weighting that the City Council, as responsible, must carry out in order to assess the relevance of access to certain personal data.

III

This Authority has pronounced on previous occasions on the access of councilors to the entry and exit register of documents of municipal corporations with respect to the regulations for the protection of personal data, among others in the opinions

CNS 29/2018, CNS 10/2017, CNS 80/2016, CNS 24/2015. The legal considerations of which are fully applicable to the case at hand.

From the point of view of data protection regulations, it must be borne in mind, on the one hand, that access to municipal information, which 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 in question, in the terms provided for in the aforementioned local regime legislation. And, on the other hand, that it is justified, exclusively, the processing of the essential data to fulfill the purpose.

Therefore, it entails carrying out, in each specific case, a weighting exercise in order to assess the implications that the exercise of the councilor's right of access to information may have for the rights of the people affected, such as the right to the protection of personal data.

For the purposes we are dealing with, you need to know what information is contained in the City Hall's Entry and Exit Register. In this sense, article 16.1 of Law 39/2015, of October 1, on the common administrative procedure of public administrations provides that: "the electronic register of each Administration or body must guarantee constancy, in each settlement to be made, of a number, heading expressing its nature, date and time of presentation, identification of the interested party, sending administrative body, if applicable, and person or administrative body to which it is sent, and, if where applicable, reference to the content of the document being registered" (...).

In the same sense, the Regulation on the organization, operation and legal regime of local entities, approved by Royal Decree 2568/1986, of November 28, applicable to the City Council in the absence of an organic regulation of its own that regulates it, in its article 153 provides that:

"1. The entries in the Registry will contain an exact reference to each of the documents that are sent from the local offices or that are received in them and, for the purpose of entry, the following points must be included:

- a) Correlative order number. b) Date of the document, with expression of the day, month and year. c) Date of entry of the document in the Registry offices. d) Provenance of the document, with indication of the authority, corporation or person who signs it. e) Extract, review or brief reference of the matter included in the body of the registered writing. f) Business, Section or department to which your knowledge corresponds. g) Resolution of the matter, date and authority that dictated it, and h) Observations for any annotation that may be appropriate in any given case. (...)"**

Therefore, a prior analysis should be made in relation, among others, to the greater or lesser degree of concreteness with which the information is entered in the Register, for example, in relation to the use of more or less generic or descriptive typologies about the matter or reason for which a letter is submitted to the Registry, in order to facilitate subsequent consideration in the event of requests for access to information by the councilor.

Given that, the claim focuses on the request for access to the Register of entries and exits of documents of the City Council on a fortnightly basis, and which corresponds to a very high volume of settlements (for example, the period included from July 1 to 14, 2019, a total of 754 settlements were counted), it is understood that this is a generic and indiscriminate request, since, although it limits the period of time with respect to which bids for access (every two weeks), makes no mention of the area of municipal action that is of interest (works and services, education, human resources, etc.), and/or the possible subjects affected, among d other aspects.

Thus, given the terms in which the query is formulated, it does not seem possible to conclude that a generalized and indiscriminate access to the information contained in the entry and exit register of documents is justified from the point of view of the right to protection of data

With regard to the possibility of facilitating access to the information of the Entry Register prior to anonymization of personal data, this possibility could be relevant in those cases in which, without including specific data that can identify or make identifiable natural persons affected, a satisfactory response can be given to the request made.

However, it must be borne in mind that, so that anonymization can be considered sufficient for the purposes of data protection regulations, it would not only be necessary to eliminate the information contained in the fields intended to identify the person issuing or receiving a certain written, or to identify the interested person, but also any other information that, directly or indirectly, allows the interested persons to be identified without disproportionate efforts. And this, in a volume of information such as the one requested, can be a very complex operation, especially in a municipality of this size, where people can be more easily identified than in a large municipality.

All this without prejudice to the fact that in other cases in which the requested information is obtained, in view of the purpose and the circumstances that arise, it may be justified to offer anonymized information about the writings of the entry and exit register of documents or even identifying the affected people.

IV

Finally, it should be remembered that whenever the councilor's access to personal data is carried out due to the functions entrusted to him as such, he must be governed, aside from the duty of reservation imposed by the regulations of local regime (article 164.6 TRLMRLC), by the principle of purpose limitation (article 5.1.b)) and by the principle of integrity and confidentiality (article 5.1.f)) established in the RGPD.

Thus, article 164.6 of the TRLMRLC provides: "the members of the corporation must respect the confidentiality of the information to which they have access by virtue of their position if the fact of publishing it could harm the interests of the local entity or third parties."

According to this article, the members of the Corporation have the duty to keep a reservation in relation to the information provided to them to make possible the development of their function.

Likewise, in accordance with the principle of purpose limitation (Article 5.1.b) RGPD), any use of personal information subsequent to access by the councilor

it should also be based on a legitimate purpose. Otherwise, we could be faced with a treatment not adjusted to the RGPD, even though the access to personal data was initially considered legitimate.

In addition, this purpose in which the further processing of personal data by the councilor could be framed should not be incompatible with that which at the time would have justified the access, that is the exercise of the functions legally attributed

For its part, in accordance with the principle of integrity and confidentiality (article 5.1.f) "personal data will be treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized treatment or illegal and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures."

Therefore, if the subsequent use of the information to which the councilor would have had access by reason of her position involved disclosing the personal data contained therein to third parties, without the consent of the affected person or another legal basis (Article 6 RGPD), we could also be faced with an action not adjusted to data protection regulations, even though the access was originally considered lawful.

conclusion

The data protection regulations prevent the claimant's access to all the information contained in the entry and exit register of documents, in a given period, because it is a generalized and indiscriminate access to all the information . This without prejudice to the fact that access to the information can be given anonymously or that, with respect to specific requests, access may be granted after consideration.

Barcelona, December 20, 2019