

Ref. : IAI 55/2019

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 town hall, presented by a citizen for the denial of access to information about her daughter's registration.

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 against a town hall, submitted by a citizen for the denial of access to the information on his daughter's registration.

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

Background

1. On December 13, 2019, a citizen filed a complaint with the GAIP against a city council, for the denial of access to information on her daughter's registration.

Specifically, he states that he maintains shared custody of the common daughter with the father, without an agreement between the two parties regarding the daughter's registration. He alleges that the father registered the minor irregularly and that the City Council denies him the right of access to the address and the consultation of the registration file.

Accompany the claim with the letter from the City Council, dated October 25, 2019, in response to your request for access to information on the registration of your daughter, a minor, in the paternal address. In this letter, the interested party is informed that the minor's father requested his and his minor daughter's registration and that the City Council would have proceeded with the registration in accordance with what is determined by the employer's regulations. At the same time, the claimant is informed that data protection regulations prevent her from being provided with the address where her daughter is registered.

It also accompanies a copy of the court ruling through which paternal authority and shared custody and custody of the common daughter is agreed, as well as the family book.

2. On December 23, 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.

3.- It is not included in the report of the City Council in relation to the present claim.

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.

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 5.1.a) of the RGPD establishes that all processing of personal data (Article 4.2)) must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency).

In this sense, article 6 of the RGPD establishes that there must be a legal basis that legitimizes the treatment, either the consent of the affected person (section 1.a)), or any of the other legitimizing bases that it provides, for example, that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (section 1.c)).

As can be seen from article 6.3 of the RGPD and expressly included in article 8 Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), the treatment of data can only be considered based on this legal basis of article 6.1.c) of the RGPD when this is established by a rule with the rank of law.

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.

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 contained in the Municipal Register is public for the purposes of article 2.b) of the LTC, and is therefore subject to transparency legislation.

The second section of the first additional provision 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 same vein, the first additional provision of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced.

The municipal register is, according to article 16.1 of Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL), "the administrative register where the residents of a municipality are recorded. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"

Section 3 of this same precept states that "The data of the Municipal Register will be transferred to other public administrations that request it without prior consent of the affected person only when they are necessary for the exercise of their respective powers, and exclusively for matters in which the residence or address are relevant data. They can also be used to prepare official statistics subject to statistical secrecy, in the terms provided for in

the Law 12/1989, of May 9, of the Public Statistics Function and in the statistics laws of the autonomous communities with competence in the matter."

Article 40.1 of Legislative Decree 2/2003, of April 28, approving the Revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC):

"40.1 The municipal register is the administrative register where residents of a municipality are recorded. The data contained in the register constitute proof of residence in the municipality and usual address. The certifications issued by the town councils on this data have the character of a public document and, consequently, enjoy the presumption of veracity and prove the data recorded in them, for all administrative purposes(...)."

40.2 The data contained in the municipal register are confidential. Access to this data is governed by the rules governing citizens' administrative access to archives and public records and by Law 5/2002, of April 19, of the Catalan Data Protection Agency.

40.3 Without prejudice to the provisions of section 2 and without requiring the consent of the person concerned, the data of the register may be communicated to other public administrations that request it, when they are necessary to exercise the respective powers, and exclusively for the matters in which it is relevant to know the residence or address."

Likewise, Royal Decree 1690/1986, of July 11, which approves the Population and Demarcation Regulations of Local Entities (RPDTEL), provides in article 53:

"1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes.

2. The data of the municipal register will be transferred to other public administrations that request it without the prior consent of the affected person only when they are necessary for the exercise of their respective powers, and exclusively for matters in which the residence or domicile is given relevant They can also be used to prepare official statistics subject to statistical secrecy, in the terms provided for in Law 12/1989, of May 9, of the Public Statistics Function.

Outside of these cases, the register data are confidential and access to them will be governed by the provisions of Organic Law 5/1992, of October 29, on the Regulation of the Automated Processing of Personal Data and the Law 30/1992, of November 26, of the Legal Regime of Public Administrations and of the Common Administrative Procedure.

3. In any case, the municipal register is subject to the exercise by residents of the rights of access and rectification and cancellation regulated in articles 14 and 15 of Organic Law 5/1992, of October 29."

Articles 40 of the TRLMRLC and 53 of the RPDTL provide that the data of the register are confidential, and access to this data - apart from the cases of transfer to other Public Administrations in the terms provided for in section 2 of these precepts - is subject to the provisions of the data protection regulations and the regulations for administrative access of citizens to archives and public records.

Article 13 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC), recognizes in section d) the right of access of all citizens "to public information, archives and records, in accordance with the provisions of Law 19/2013, of December 9, on transparency, access to public information and good governance and the rest of the Legal Order." In the area of Catalonia it is necessary to take into account Law 19/2014, of 29 December, on transparency, access to public information and good governance (LTC).

Therefore, in application of the LTC and the LPAC, access to the data of the register is governed by its specific regulations and subsidiarily by the legislation on transparency and the regulations on the protection of personal data.

III

In the case analyzed, and as can be seen from the complaint, the interested party would have requested from the City Council access to the registration file of her daughter, at the paternal address at the latter's request.

It is not known what the exact content of the file is but taking into account the Resolution, of January 30, 2015, of the Presidency of the National Institute of Statistics and of the General Directorate for Coordination of Competences with the Autonomous Communities and the Local Entities, on technical instructions to the Town Councils on the management of the Municipal Register, it is foreseeable that they will include the register sheet and the supporting documentation of the identity, address of residence and registration of the minor daughter.

According to the answer given by the City Council to the person concerned, the father would have requested his and his daughter's registration in the paternal domicile, presenting the original Family Book in which the minor appeared, accompanied by a Responsible Declaration stating that the mother was in agreement with the registration of the minor at this address.

Taking this into account, the registration file that the claimant requests to consult would affect, -in addition to the merely identifying data of the municipal employees involved in its processing, to which access should be granted, according to article 24.1 of the LTC -, to the personal information of the parent requesting the registration and of the minor daughter registered in the same address, as well as the information referring to the same claimant declared by the father in the Declaration Responsible person referred to by the City Council.

Given the type of data that the registration files tend to collect, it does not seem that the access could affect particularly protected data under the terms provided for in article 23 of the LTC, access to which should be limited, unless the express consent of the affected person is obtained.

As for the rest of the information, and in accordance with article 24.2 of the LTC, "2. If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in 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."

When making this weighting, within the information contained in the file, it is necessary to distinguish between the information referring to the claimant herself, that referring to the minor daughter, and that referring to the father requesting the information.

IV

With regard to the information referring to the same person making the claim that contains the file to which access is sought, a first weighting element to take into account is that among the information to which access is sought there is various information relating to the person who makes the request.

In relation to the possibility of accessing one's own information, note that article 15 of the RGPD recognizes the right of access of the interested person (natural person who owns the data that is the subject of the treatment) in the following terms :

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

a) the purposes of the treatment; b) the categories of personal data in question; c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations; d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period; e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment; f) the right to present a claim before a control authority; g) when the personal data has not been obtained from the interested party, any available information about its origin;

h) the existence of automated decisions, including the elaboration of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party. 2. (...)

3. The controller must provide a copy of the personal data subject to processing. For any other copy requested by the interested party, the controller has the right to charge a reasonable fee based on administrative costs. When the interested party submits the request by electronic means, and unless the latter requests that it be done in another way, the information must be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 does not negatively affect the rights and freedoms of others.”

This precept recognizes the right of the affected or interested person to request and obtain from the person in charge of the treatment information about the personal data subjected to treatment, including information about the origin of the data when these have not been obtained from the same interested person.

However, this right is not absolute and may be limited in accordance with the provisions of article 23 GDPR:

"1. The Law of the Union or of the Member States that applies to the person responsible or the person in charge of the treatment may limit, through legislative measures, the scope of the obligations and the rights established in articles 12 to 22 and article 34, as well as in article 5 to the extent that its provisions correspond to the rights and obligations contemplated in articles 12 to 22, when such limitation essentially respects fundamental rights and freedoms and is a necessary and proportionate measure in a society democratic to safeguard: a) the security of the State; b) the defense; c) public security; d) the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, including protection against threats to public security and its prevention; e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including in the fiscal, budgetary and monetary areas, public health and social Security; f) the protection of judicial independence and judicial procedures; g) the prevention, investigation, detection and prosecution of violations of deontological norms in the regulated professions; h) a function of supervision, inspection or regulation linked, even occasionally, with the exercise of public authority in the cases contemplated in letters a) ae) and g); i) the protection of the interested party or the rights and freedoms of others; j) the execution of civil demands. (...)"

It seems clear that Article 15 RGDPD recognizes the claimant's right to access the information relating to her person, treated by the City Council in the registration file including the information on her origin. This enables the City Council to provide the claimant with access to the content of the responsible declaration signed by the father in which he declares the claimant's compliance with the registration. This is information related to your person who declares a

third party, under his responsibility, and it does not seem that he can object to any of the limitations provided for in article 23 RGD.

Apart from this first element to be assessed in the weighting, it is also necessary to take into account that, as can be seen from the file, the City Council would have collected from the parent requesting the registration, the data contained in the Family Book about the mother, as well as a responsible declaration from the father in which he declares that the mother (claimant of the information) would agree with the registration of the minor in the paternal domicile.

All this by virtue of the Resolution of January 30, 2015, of the Presidency of the National Institute of Statistics and the General Directorate of Coordination of Competencies with the Autonomous Communities and Local Entities, on technical instructions to the Town Councils on management of the Municipal Registry, states in section 1.3 that "Unemancipated minors and disabled adults will have the same neighborhood as the parents who have custody or custody or, failing that, of their legal representatives, unless authorized in writing of these to reside in another domicile or municipality."

The judgment on the guardianship and custody procedure, issued on April 19, 2018, which the interested party accompanies with the claim, recognizes both parents' joint ownership and exercise of parental authority in accordance with what they have articles 154 and 156 of the Civil Code and 236-1 of Book Two of the Civil Code of Catalonia. For these purposes, it states that "all decisions that with respect to their daughter will be adopted in the future, as well as everything that, in accordance with the priority interest of the daughter, must be known to both parents, and this because the parties are in agreement and have informed in this sense to the Ministry of Finance, considering that it is the most beneficial for the minor (...) (second legal basis). The guardianship and custody of the couple's minor daughter is also assigned, shared by both parents, in the terms provided for in the interlocutory order on provisional measures issued previously, and in the same sentence (third legal basis).

Article 233-8. CCC provides that:

"1. The nullity of marriage, divorce or separation does not alter the responsibilities that the parents have towards their children in accordance with article 236-17.1. Consequently, these responsibilities remain shared and, as far as possible, should be exercised jointly.

2. The spouses, in order to determine how parental responsibilities should be exercised, must submit their parenting plan proposals, with the content established in article 233-9.

3. The judicial authority, when deciding on the parental responsibilities of the parents, must prioritize the interest of the minor."

The sentence that accompanies the claim is not pronounced in relation to the issues relating to possible changes of address of the minor. Nor is there evidence that the manner of making decisions in this regard has been specified, as provided for in section 9 of article 233 CCC in relation to the parenting plan.

Article 236-11 CCC, which regulates the exercise of parental authority in the case of parents living separately, provides in section 6 that "The parent who exercises parental authority, unless the judicial authority provides another thing, he needs the express or tacit consent of the other to decide the type of education of the children, to change their address if this separates them from their usual environment and to perform acts of extraordinary administration of their goods. It is understood that

consent has been tacitly conferred if the thirty-day period has expired from the notification, duly accredited, that has been made to obtain it and the parent who does not exercise authority has not raised the disagreement according to what is established article 236-13.”

Section 2.2 of the Resolution of January 30, 2015, on supporting documentation for the representation of minors, refers to the general rules of Civil Law, and provides, immediately thereafter, that:

"In accordance with the provisions of art. 162 of the Civil Code, parents who have parental authority have the legal representation of their unemancipated minor children, so in principle it will be enough to present the Family Book or Birth Certificate to deem said representation valid. (...)

When requesting the registration or change of address of a minor with only one of his parents, together with the completion of the registration form or forms to notify the City Council of the registration data and the contribution of the Libro de Familia to be deemed valid representation, the signature of both parents must be required (as long as custody and custody of the minor is not entrusted exclusively to the person making the request). The signature of the other parent not included in the birth certificate can be collected in the birth certificate, if qualified for it, or in a written authorization that accompanies the birth certificate.

When, exceptionally, the signature of both parents is not available, a declaration of responsibility, signed by the parent making the request, of having custody and custody of the minor and sufficient legal capacity to make the registration or change of address in the Register must be provided municipal, as well as not being involved in any of the alleged de facto provisions in articles 103.1.c) or 158.3.c) of the Civil Code. Annex I includes the responsible declaration model, with probative legal effects, if any, of documentary falsity.

In the event that the parent who makes the request is involved in any of the de facto cases provided for in articles 103.1.c) or 158.3.c) of the Civil Code, he must provide a copy of the corresponding judicial decision authorizing the registration or the change of address of the minor in the municipal register.

On the other hand, in the cases of custody and custody of minors shared by both parents in very balanced periods of time, if the judicial sentence by which it is fixed is not pronounced on the place of registration, the City Council, provided that it is aware of the situation, will require documentary evidence that there is a mutual agreement between the parents before processing any modification of the minor's domicile and, in the event that the mutual agreement cannot be proven, require the presentation of a judicial resolution that is expressly pronounced on the registration, and not carry out the modification as long as one of the previous documents is not provided.(...)"

From all the above, it follows that the issue of changing the address of minor children is a relevant decision that should be previously agreed between both parents. The claimant states that there is no agreement between the parents regarding the registration of the minor daughter in the paternal residence, a fact that contradicts the facts declared by the father in the declara

responsible that he would have presented to the City Council and that serves this to proceed with the registration of the minor daughter at the address of the declarant.

All this shows that there is a clear legitimate interest of the mother in accessing this information in order to be able to exercise her rights, including the right of defense in relation to this matter. On the other hand, and to the extent that it is information related to itself, no unjustified attachment to the right to the protection of personal data of third parties follows.

It does not seem that the data protection regulations can cause any inconvenience to facilitate the claimant's access to said information for the purposes of complying with the obligations of the transparency legislation, especially if we take into account that, as we have explained, the right of access provided for in Article 15 GDPR would also allow you to access your own information contained in the file.

In fact, the claimant already has certain personal information provided by the City Council in the response to the access request, when she is informed that the father "signed the Declaration Responsible, which has probative effects of document falsification, alleging (...)." And therefore, it does not seem that any impediment has been appreciated in relation to the obtaining of said information by the interested party.

v

Regarding the claimant's access to information on the daughter's registered address - under 14 years of age, when making the weighting required by article 24 LTC, it must be taken into account that the applicant holds the legal representation of her daughter, as can be seen from the court ruling that accompanies the claim. Regarding this, it should be noted that article 12 LOPDGDD establishes the following:

"1. The rights recognized in articles 15 to 22 of Regulation (EU) 2016/679 may be exercised directly or through a legal or voluntary representative.

(...)

6. In any case, the holders of parental authority may exercise the rights of access, rectification, cancellation, opposition or any other that may correspond to them in the context of this organic law in the name and representation of children under the age of fourteen.

(...)."

Therefore, the data protection regulations allow the holders of parental authority to exercise by representation the right of access (Article 15 RGPD) of their children under 14 years of age. Taking this into account and that no limitation would apply to the right of access provided for in Article 15 RGPD, as set out in the previous legal basis, is a key element, when making the weighting that this is information to which the applicant may have access if he exercises the right provided for in Article 15 RGPD on behalf of his daughter.

On the other hand, it should also be taken into account that, apart from the fact that it has legal representation, the second book of the Civil Code of Catalonia, relating to the person and the family approved by Law 25/2010, of 29 July (in hereinafter, CCC), regulates parental authority and establishes that the parents are the holders of parental authority over non-emancipated minor children (art. 236-1 CCC). According to article 236-2 of the CCC, parental authority is an inexcusable function that, within the framework of the general interest of the family, is exercised personally in the interest of the children, in accordance with their personality and for to facilitate its full development.

The exercise of authority over the children involves their legal representation as established in article 236-18.1 CCC. It is worth saying that paragraph 2 of article 236-18 of the CCC excludes from the legal representation of children acts relating to personality rights, unless the laws that regulate them establish something else. In this case, the possibility of the right of access being exercised by representation is expressly provided for in article 12 LOPDGDD.

On the other hand, article 236-17.1 of the CCC, which regulates the relationship between parents and children, states that: "Parents, by virtue of their parental responsibilities, must take care of their children, provide them with food in the sense wider, live with them, educate them and provide them with a comprehensive training. The parents also have the duty to administer the children's patrimony and to represent them."

Therefore, the duties that the legal system attributes to the holders of parental authority, which include the duty of representation of minors, would enable access to the information necessary for their exercise.

In this case, the ownership and joint exercise of shared parental authority, recognized in the judgment accompanying the file, would enable the exercise of the right of access to the personal data of the minor daughter collected and processed by the City Council in the record of its registration by the claimant, in her name and representation.

In accordance with this, the City Council should provide the claimant with information on the registration of the servant daughter in the paternal domicile. Specifically, he should be able to access the register where the minor is registered, including the name of the father and the address where he is domiciled, and the supporting documentation (responsible declaration) of the applicant that would have justified the registration of this at the paternal address.

To warn, however, that the legal system establishes the basic principle of the best interests of the minor, which must govern all the actions of the public authorities in relation to this (Article 11.2.a) Organic Law 1/1996, of January 15, of legal protection of minors, partial modification of the Civil Code and the Civil Procedure Law, and article 5.1 of Law 14/2010, on the rights and opportunities of children and adolescents). The protection of the interested party (in this case a minor) is one of the causes that could limit the right of access of article 15 RGPD, in accordance with article 23.1 i) RGPD.

Parental authority is exercised personally in the interest of the children, as recognized by article 236-2 CCC, and the same civil code regulates certain cases that may entail the loss of the parents' capacity to exercise the legal representation of minor children .

The non-existence of agreement between the parties alleged by the claimant is evidence that there are discrepancies in relation to the registration of the minor daughter in the paternal domicile, registration which should count, according to the regulations, with the agreement of both parents .

The elements exposed should also make the mother's right of access prevail over her daughter's right to data protection, unless there is a conflict of interest between the two.

In this sense, article 236-18.2.c) of the CCC, excludes the legal representation of the children: "c) Acts in which there is a conflict of interests between both parents or between the parent exercising authority and the children."

Taking this into account, and in the face of any doubts that may arise regarding any discrepancies between both parents in relation to the minor's domicile, and for the purposes of ruling out any potential conflicts of interest between both parents, or with the minor daughter, or any other circumstance that may have occurred that would imply a limitation of legal representation on the part of the claimant, it would be necessary for the father to be informed of the existence of the request for access presented by the mother, and to be informed that will proceed to communicate the information on his daughter's registration, unless the hearing procedure results in some circumstance that should lead to a limitation of this right of access.

VI

Finally, with respect to access to the personal data that may be contained in the file that is intended to be consulted referring exclusively to the parent requesting the registration, (included in the employment record or in the documentation proving the identity or address of residence referred to in points 2.1 and 2.3 of the Resolution of January 30, 2015), it must be said at the outset that the specific regulations on the register do not contemplate transfers of data to third parties beyond those provided for to other administrations public Articles 40 TRLMRLC and 53 indicate, as has been pointed out, the confidential nature of the data contained in the register.

It cannot be ruled out, however, that access by third parties to certain personal data could be justified under the protection of transparency legislation, regulations of subsidiary application to the special access regime provided for in the regulations governing the register, if of the weighting between the different rights and interests provided for in article 24.2 of the LTC, a superior interest results that justifies the prevalence of this front of the right to data protection of the affected person.

The claimant justifies the access by claiming that she has shared custody of the minor daughter, and in the absence of an agreement in this respect, the father would have registered her in his address irregularly. These facts contradict what, according to the City Council, the father would have declared in the signed Declaration of Responsibility and which serves the City Council to proceed with the registration of the minor daughter at the address of the declarant.

The private or particular dimension of the right of access to public information is specified by allowing people to access information that may be of interest to their sphere of particular interests and in this sense, the purpose of access plays an essential role when weighing between the two rights at stake.

This is made clear by article 22.1 LTC, by providing that "1. The limits applied to the right of access to public information must be proportional to the object and purpose of protection. The application of these limits must take into account the circumstances of each specific case, especially the concurrence of a higher public or private interest that justifies access to the information" and article 19 of Law 19 / transparency by expressly establishing what must be taken into consideration "The justification by the applicants of their request in the exercise of a right (...)".

Article 236-11 CCC, provides in section 6, as noted, that the parent exercising parental authority, unless the judicial authority provides otherwise, needs the express or tacit consent of the another to decide the type of education for the children, to change their address if this separates them from their usual environment. For these purposes, it is understood that consent has been conferred tacitly if the period of thirty days has expired from the notification, duly accredited, that has been made to obtain it and the parent who does not exercise authority has not raised the disagreement according to the provisions of article 236-

Article 236-13 CCC provides that "In the event of disagreement over the exercise of parental authority, either parent may appeal to the judicial authority, which must decide after hearing the other parent and the children who have completed twelve years or who, having less, have sufficient knowledge."

In turn, the Resolution, of January 30, 2015, foresees in cases like the one at hand that "... in the cases of custody and custody of minors shared by both parents in very balanced periods of time, if the sentence the court for which it is fixed does not pronounce on the place of registration, the City Council, as long as it is aware of the situation, will require documentary proof that there is a mutual agreement between the parents before processing any modification of the minor's domicile and, in the event that the mutual agreement cannot be proven, demand the presentation of a judicial resolution that expressly pronounces on the registration, and not carry out the modification as long as none of the previous documents are provided.(...) "

Taking into account that the civil and registry rules provide in these cases that the decision on the change of domicile of the minor children is a decision agreed between both parents, it seems clear that there is a legitimate interest in the claimant to access the information that will allow him to prove any irregularities produced in the registration file processed by the City Council without his consent, and to exercise the legal actions he deems appropriate in defense of their rights and interests or those of the common minor daughter.

In this sense, the claimant's access to the address of residence of the father that may appear in the register would be justified to the extent that it coincides with that of residence of the minor daughter. Access to the information contained in the responsible declaration (different from that referred to the claimant itself) could also be justified if this has served the City Council to justify the registration of the daughter in the paternal address.

A third party's access to a person's domicile would directly affect the affected person's private sphere. In this case, however, it is the address where the minor daughter resides. Both parents have, according to the judgment accompanying the file, joint custody and custody. The regulations provide that the decision on the address of the minor is consensual, and therefore, admits that in these cases, the information on the address of residence of the parent who registers the minor children in that address is known to the other parent, with which the privacy prospects of the requesting father are necessarily limited in this case.

Likewise, the content of the statements made by the father justifying the registration must be known to the claimant, so that she can take the legal actions she deems appropriate. The regulations provide for this declaration exceptionally when not

record the signature of both parents on the registration form or with an attached authorization, unless custody is entrusted exclusively to the parent making the request.

The claimant's disagreement with a registration with which she should have agreed, gives her the right to obtain the information about what the father alleges and which allows the City Council to dispense with having to ask the mother's permission.

Access to the rest of the personal information referring to the parent requesting the registration that may be contained in the file (such as that which appears from the title deed, lease contract or any other document certifying the address of residence) does not seem to be relevant to the exercise of the claimant's rights and interests. What the claimant highlights is the lack of agreement between both parents and the eventual irregularities that may have occurred in this regard, an issue that is related to the documentation certifying the legal representation of the minor daughter who the City Council has used to register it. Taking this into account, and in application of the principle of data minimization (art. 5.1.c) of the RGPD), access to information that is not strictly necessary to achieve the purpose pursued should be avoided.

All this without prejudice to the fact that the hearing procedure for the affected parent results in circumstances justifying the limitation of the claimant's access to said information.

Conclusions

The data protection regulations do not prevent the claimant's access to their own information and that of their minor daughter that may appear in the registration file of the latter at the paternal address, by virtue of the capacity of legal representation provided for in article 12 LOPDGDD of the LOPD, and the article in article 136-18 of the CCC.

Even so, given that the information provided shows the existence of a possible conflict between the parties, it will be necessary to transfer this request to the father so that he can allege if there is any circumstance that should lead to a limitation of this right of access.

Access to the rest of the information relating to the father contained in the registration file would only be justified if this has served the City Council to proceed with the registration of the daughter in the paternal address. Otherwise, access should be limited.

Barcelona, January 21, 2020