

Ref.: IAI 56/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim submitted by a citizen against a city council for the denial of access to information on the invoices justifying the expenses incurred by the political groups municipalities in charge of the financial endowments given by the 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 by a citizen against a city council in relation to the denial of access to the information on the invoices justifying the expenses incurred by the municipal political groups in charge of the financial endowments delivered by the corporation.

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 June 5, 2019, a citizen submitted a letter to the City Council in which he requested a breakdown of the expenses incurred by the municipal groups in charge of the financial allocations given by the corporation for the year 2017 and first semester of the year 2018, with invoices included.
2. On July 3, 2019, the City Council notifies the person requesting the resolution by which it agrees: "PARTLY APPROVE the request for the right of access to public information made by Mr (...), for which it requests a breakdown of the expenses with invoices included of the contributions of public money delivered by this City Council to the municipal group of (...) in 2017 and the first half of 2018, and the part relating to the justification of expenses with invoices included (...)."
3. On July 25, 2019, the interested party presents an alternative appeal against the City Council's resolution. The corporation dismisses the appeal that it notifies the interested party on October 9, 2019.
4. On October 25, 2019, the interested party filed a claim with the GAIP alleging that the City Council had provided him with partial information. In this letter, the claimant reiterates that he wants to access the requested information, specifically, the invoices justifying the expenses.
5. On October 30, 2019, the GAIP requests a report from the City Council in relation to the claim presented.
6. On December 30, 2019, the GAIP requests this Authority to issue a report in relation to the claim submitted.

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

According to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), personal data is: "all information about a 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; (art. 4.1 RGPD).

Therefore, the processing of personal data (art. 4.2 RGPD) that may be contained in the requested information, specifically, the invoices justifying the expenses incurred by the municipal groups, is subject to the principles and guarantees of the protection regulations of personal data (RGPD).

According to article 86 of the RGPD:

"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, body or entity in accordance with the Law of the Union or of the Member States that apply it 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 29 December 2014, on transparency, access to information and good governance, aims to regulate and guarantee the transparency of public activity.

Article 18 of Law 19/2014 establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (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".

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

The information related to the financial allocations received by the municipal political groups in charge of the municipal budgets is "public information", subject to the access regime provided for in the transparency legislation. However, in accordance with article 20 and s. of Law 19/2014, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information containing personal data, it is necessary to assess whether the right to data protection of the affected persons would justify or not the limitation of the right of access to public information regulated in Law 19/2014 which invokes the requesting person.

III

As can be seen from the claim, the request submitted has not been fully appreciated since access has been given to the breakdown of expenses but not to the invoices justifying these expenses. Therefore, the claimant requests again "the expenses with their corresponding invoices of the municipal groups of (...)" for the year 2017 and the first half of 2018.

Article 73.3 of Law 7/1985, of April 2, regulating local regime bases (LRBRL) provides:

"3. For the purposes of their corporate action, the members of the local corporations will form political groups, in the form and with the rights and obligations that are established with the exception of those who are not part of the political group that constitutes the electoral formation by those who were elected or who leave their group of origin, who will be considered non-affiliated members.

The Plenary of the corporation, in charge of its annual budgets, may assign to political groups an economic endowment that must have a fixed component,

identical for all groups and another variable, depending on the number of members of each of them, within the limits that, where appropriate, are established with a general character in the General Budget Laws of the State and without which they can be allocated to the payment of personnel remuneration of any type in the service of the corporation or the acquisition of goods that may constitute fixed assets of a patrimonial nature.

The economic and political rights of non-affiliated members may not be superior to those that would have corresponded to them had they remained in the group of origin, and will be exercised in the manner determined by the organic regulations of each corporation.

This provision will not apply in the case of candidacies presented as an electoral coalition, when any of the political parties that make up it decide to abandon it.

The political groups must keep a specific accounting of the endowment referred to in the second paragraph of this section 3, which they will make available to the Plenary of the Corporation, whenever it requests it. (...)"

The LRBRL foresees that the Plenary of the corporation assigns to the political groups financial endowments that must contain a fixed component, identical for all groups and another variable, depending on the number of members of each of these groups, and within of the limits that may be established by the respective General Budget Laws of the State.

These endowments, the amount of which is to be determined by the Plenary, cannot be used for the payment of staff remuneration of any kind in the service of the Corporation, nor for the acquisition of goods that may constitute fixed assets of a patrimonial nature.

As can be seen from the applicant's claim, information on the expenses incurred against the financial endowments they receive from the City Council, with varying degrees of detail, would have already been provided following the first request made .

From here, information is requested on the invoices that would justify these expenses, all this with respect to the year 2017 and the first half of the year 2018.

From the outset, the information relating to legal entities that may be included in the supporting invoices for the expenses of the municipal groups, will remain outside the scope of protection granted by the regulations on the protection of personal data (Article 4.1 RGD). Consequently, there would be no impediments, from the perspective of data protection, to give the person claiming access to this type of information relating to legal entities.

In addition, when it comes to information relating to physical persons, the type of information requested does not appear to contain particularly protected data.

So, in order to grant access, a reasoned weighting will need to be done between the different rights and interests at stake, taking into account article 24.2 LTC according to which, "... access to information can be granted , with the previous reasoned weighting of the public interest in the disclosure and the rights of the persons affected. 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. (...).”

IV

The person making the claim does not justify the specific reason for which 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 " establish a relationship system between the people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and of administrative management and the guarantee of the retention of accounts and of responsibility in public management (article 1.2 LTC). In the absence of greater concreteness on the part of the applicant, the purpose of the access must be placed in this context.

For the purposes of transparency, there does not seem to be any doubt about the relevance it can have for citizens, having the information that allows them to know what the municipal political groups are spending the funds they receive from the corporation's budget. With this information the citizen could form a critical opinion on the destination that each of the different political groups makes of the money coming from taxpayers. However, the question that needs to be raised is whether, in order to achieve the purpose of transparency, it is necessary to access the personal information that may be contained in the documentation to which it is intended to be accessed.

There is no information available on what personal data the requested documentation could contain, in particular, the different invoices justifying these expenses.

Now, taking into account the provisions of Royal Decree 1619/2012, of November 30, which approves the Regulation regulating invoicing obligations (specifically articles 6 and 7), it must be considered that the invoices in general, they will contain, at a minimum, the data corresponding to the invoice number, the date of issue, the name and surname, the name or full company name, both of the person obliged to issue the invoice and the recipient of the operations; the NIF; the address of the obligee and the addressee, among others. In the case of simplified invoices, they will include, among others, the NIF, the name and surname, as well as the company name or full name of the person obliged to issue it.

In general, and to the extent that the funds received by the political groups should be used for operating expenses, the range of expenses that could have been made with this money is wide. It can range from the purchase of office equipment, the rental of premises to carry out the group's activity, the organization of advertising campaigns, the hiring of external professional advice, to the payment of representation expenses (diet, travel , lunches, etc..).

This information, on the one hand, could provide information about the activity of specific councilors who are members of the group, depending on what information is contained in the justifications (e.g. lunch of a certain councilor with another person in a certain restaurant) or that, without the need for their direct identification to be recorded, can be related to a specific person (for example, in the case that the political group is made up of a single person, as is the case in this case, two of the municipal groups). But, on the other hand, it could provide information on third-party individuals who may have been hired to perform a service (for example, if a professional was hired for external advice).

In the event that these are expenses recorded as imputable to the activity of a certain councilor, the data protection regulations would not prevent access to this information. From the point of view of the councilor who may be affected, it must be taken into account that these people hold public positions, have and use, with a wide margin of discretion, public money that should be intended to cover expenses of functioning of the group of which they are part, and therefore linked to the public purpose they pursue. The need to control this margin of discretion in relation to the use of public funds can justify access to this information.

However, with regard to the information that may affect the councilors who are members of the group, in the case of representation expenses (travel, lunches, etc.) it would be advisable to limit this information to the minimum content to comply with the purpose of controlling the destination of the funds received by political groups. For example, with regard to the information about the lunches that a councilor has attended, due to his representative function, this information could contain the names of the restaurants, the amounts paid, etc., but it would not be necessary to provide, for example, the information on the types of menus you have requested, since this would allow us to analyze or establish certain aspects related to, for example, your health, your personal preferences or establish non-pertinent behavioral guidelines to achieve the intended purpose. Thus, the degree of interference with the privacy of the councilor would be much lower and would undoubtedly respect the principle of data minimization. In the case of travel, to take another example, it would not seem necessary

With regard to the third physical persons who would not be part of the group and who could eventually be identified in the respective invoices justifying the purchases or services paid for by the political groups, in principle, in the absence of greater concreteness on the reasons for which access is of interest, it seems that it would be information linked to some professional activity (either as a result of providing supplies or the provision of services) so the intrusion into the private lives of these people would be minimum. In this sense, the need for control in relation to the use of public funds can justify access to this information.

In this sense, it may be good to remember that in the field of public administration procurement, information on the identity of the contractors, the object of the contract and the amount thereof, must be published, among other things information on the transparency portal (art. 13 LTC) precisely as a measure of transparency in the use of public funds.

In the case of municipal groups, regardless of the procurement regulations that apply to them and the active advertising obligations they may have, it is clear that in the contracts

that have subscribed using the public funds granted by the administration also coincides with the need to justify the use of these funds to the public, thus limiting the right to data protection of the third parties with whom they subscribe would be fully justified when the right of access is exercised.

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 access to the supporting invoices for the expenses that contain the personal data of the councilors as well as of third natural persons who are not part of the group, for the purposes of controlling the destination of the funds received by the political groups .

Barcelona, January 21, 2020