PD 6/2019

Legal report in relation to the Draft order approving, modifying and repealing evaluation tables and document access

A letter from the Commission is presented to the Catalan Data Protection Authority National Committee for Documentary Access, Evaluation and Selection (hereinafter, the Commission), in which the Authority is requested to issue a report on the Draft order by which evaluation tables are approved, modified and repealed and documentary access.

Having examined the project, which is not accompanied by any other documentation, and taking into account the current applicable regulations, and having seen the report of the Legal Counsel, the following report is issued.

Legal foundations

I

(...)

II

The document evaluation and access tables (TAAD) incorporate, in accordance with the provisions of article 9 of Law 10/2001, of July 13, on archives and document management, the evaluation and the deadline conservation of each documentary series.

According to article 9, cited, once the active and semi-active phases have been concluded, the evaluation regulations must be applied to all public documents, and conservation must be determined, due to their cultural, informational or legal value or, where appropriate, its removal.

From the perspective of the right to the protection of personal data, it is necessary to take into account 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 processing of personal data (RGPD).

According to article 5.1 of the RGPD, personal data must be:

> **"a) treated in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency"); b) collected for specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose") ; c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("data minimization"); (...) e) maintained in a way that allows the identification of the interested parties for no longer than is necessary for the purposes of data processing**

personal; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the measures appropriate technical and organizational techniques that this Regulation imposes in order to protect the rights and freedoms of the interested party ("limitation of the conservation period"); f) processed in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate organizational technical measures ("integrity and confidentiality »).

According to article 89 of the RGPD:

"1. The treatment for archival purposes in the public interest, scientific or historical research purposes or statistical purposes will be subject to adequate guarantees, in accordance with this Regulation, for the rights and liberties of the interested parties. These guarantees will require that technical and organizational measures are available, in particular to guarantee respect for the principle of minimization of personal data. Such measures may include pseudonymization, provided that in that way said ends can be achieved. As long as those goals can be achieved through further processing that does not allow or no longer allows the identification of the interested parties, those goals will be achieved in that way."

It is also necessary to take into account the provisions of Organic Law 3/2018, of December 5, on Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD).

Specifically, according to article 26 of the LOPDGDD:

"It will be lawful for the Public Administrations to process data for the purpose of archiving in the public interest, which will be subject to the provisions of Regulation (EU) 2016/679 and this organic law with the specialties that derive from the provisions of Law 16/1985, of June 25, of Spanish Historical Heritage, in Royal Decree 1708/2011, of November 18, which establishes the Spanish Archives System and regulates the Archives System of the General Administration of the State and its Public Bodies and its access regime, as well as the autonomous legislation that results from application."

In short, the preservation and access to documentation that contains personal data constitutes data processing (Article 4.2 RGPD), which must be subject to the principles and guarantees of the data protection regulations, among others, the principles of purpose, limitation of the retention period, minimization and confidentiality (art. 5.1 RGPD).

From the perspective of the protection of personal data, it is necessary to know the specific information treated in each table, to determine, among others, the possible compatibility of the initial treatment with a subsequent treatment for archiving purposes (art. 5.1. b) RGPD). As can be seen from the provisions of Article 89 of the RGPD, a subsequent treatment - and detached from the initial purpose of the treatment - for archival purposes, requires the application of adequate guarantees to protect the rights of those affected, which make this subsequent treatment

Likewise, it is based on the information contained in each table, that it can be determined if the guarantees that have been established are adequate, and if the planned measures protect the confidentiality of the data.

The processed information also determines the proportionality of the subsequent treatment for archival purposes and the retention period that may be considered appropriate in each case (even, where appropriate, permanent retention).

It should be noted that, at the time of issuing this report, the Project Report is not available in order to analyze the appropriateness of the cultural, historical, legal or other reasons that may justify the preservation of the information in each case (art. 9 Law 10/2001).

At a formal level, we note that the first paragraph of the draft order refers to Law 10/2001, of July 13, on archives and documents. According to the additional provision of Law 20/2015, of July 29, amending Law 10/2001, states that "From the entry into force of this law, Law 10/2001, of 13 July, of archives and documents, shall be called the Law of archives and document management."

Annex 1 of the Draft Order does not include the code numbers that correspond to each table that is created in said Annex. Therefore, we will refer to the file number. In any case, we acknowledge that some of the forecasts included in the TAADs that we refer to in this report are repeated in identical terms in several TAADs, so that the mention of the file number in each case is not exhaustive and does not necessarily include all TAADs that include a certain mention.

Having said that, the Project refers, in a large part of the TAAD, to the fact that the documentation can contain personal data, using formulas similar to the following: "mostly they can contain personal data that are not even merely identifying related to the organization, operation or public activity of the Administration or specially protected" (for example, Exp. 54/2018, among others). In other cases, the reference to the data is even less clarifying, for example, in Exp. 34/2018, the Exp. 35/2018, or the Exp. 62/2018, in which it is foreseen that "mostly they may contain personal data that are not even merely identifying (...), and they may also contain specially protected data (...)."

In several TAAD of the Project (for example, Exp. 36/2018), the expression is also used: "They mostly contain specially protected data such as those of Article 7 of Organic Law 15/1999 (...) .", and it is also referred to, in some TAAD, that "mostly contain personal data relating to privacy (...)" (for example, File 31/2017), or that "contains data on limited matters or restricted by environment" (Exp. 19/2018), or that "may contain data on limited or restricted subjects of minors" (Exp. 30/2018). In other cases (for example, Exp.
4/2017, Exp. 33/2018, Exp. 1/2019, or Exp. 2/2019) provides that: "It may occasionally contain personal data that is not particularly protected."

As this Authority has already done on previous occasions (Reports PD 8/2015, PD 15/2015, PD 6/2017, and PD 3/2018), although specifying which categories of data are not treated in each table would already give certain information (especially when it is ruled out that the information may contain specially protected data or, in the terms of Article 9 of the RGPD, "special categories of data"), it would be convenient, as far as possible, to specify which categories are the ones that are treated.

This would make it possible to specify not only the conservation of the information, but also the access regime in each case - to which we will refer later - as well as other issues to which we have referred, in relation to compliance with the principles of article 5.1 of

the RGPD, among others, what could be the appropriate guarantees that the regulations require for the processing of data for archival purposes.

In this sense, we note that in a large part of the TAAD of the Project (for example: Files 4/2017; 37/2018; 14/2019; 22/2018, etc...), reference is made to the table contains personal data "merely identifying information related to the organization, operation or public activity of the Administration".

Regarding this, as this Authority has also agreed, without prejudice to the fact that the mention of "merely identifying" data may respond to the provision of article 24.1 of Law 19/2014, of December 29, on transparency, access to the public information and good governance (LTC), from the perspective of data protection, the processing of identifying data or any other type of data (economic-financial data, professional or academic profile, health data, etc.) is not harmless , in the sense that a disproportionate treatment (for example, the retention of data for a disproportionate period or without sufficient guarantees), may result in harm to the rights and interests of the affected person, whatever the category or typology of the data treated, even if the documentation in question contains exclusively identifying data.

In line with this, it is appropriate to agree that, from the perspective of data protection, the inclusion of identifying data in the TAAD (even if it is foreseen that "only" identifying data is treated), taking into account the matter treated in each table will in fact involve the processing of personal information that, as a whole, goes beyond merely identifying information. Thus, even in those TAADs in which it is foreseen that they can only contain "merely identifying personal data", the overall information of the TADD itself can provide more information about the affected persons.

In addition, apart from the special categories of data (art. 9.1 RGPD) and identifying data, there is a wide range of data categories (economic and financial data, data on personal characteristics, social circumstances, academic and professional data, employment data...) which, if contained in the TAAD documentation, may condition its treatment for archival purposes (technical or organizational measures to be applied, retention period, access... .). The assessment of this treatment, from the perspective of data protection principles, would require knowing which categories of data are effectively treated in each case, and not just knowing whether identifying data or special categories of data are treated.

For all that has been said, it must be acknowledged that the information available does not allow us to clearly know which categories of personal data are being treated, a question that is key, from the perspective of data protection, for the purposes of the principles of data protection regulations (art. 5.1 RGPD).

On the other hand, it should be borne in mind that article 89 of the RGPD establishes pseudonymisation as one of the guarantees to be taken into account when processing data for public archive purposes.

According to article 4.5 of the RGPD, it is necessary to understand by pseudonymization: "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears separately and is subject to measures technical and organizational techniques aimed at ensuring that personal data are not attributed to an identified or identifiable natural p

In other words, the RGPD configures pseudonymization as an adequate guarantee for data protection (art. 6.4.e), 25.1, and 32.1.a) RGPD, among others), without excluding from the scope of the data protection regulations and pseudonymised personal information (consideration 26 RGPD).

Therefore, whenever the purpose of archiving in the public interest can be achieved through pseudonymisation, this measure will have to be opted for.

A good example of this can be found in Exp. 61/2018, of the series "technical advice in the field of the family", which provides for the pseudonymisation of the data once the technical intervention has been completed.

In any case, it should be borne in mind that the term of retention of information does not necessarily have to be the same for all the documents that make up the documentary series. The principle of minimization, which is expressly referred to in article 89 of the RGPD, should lead to the retention of only those parts of the documentary series with respect to which their retention is justified.

A common consideration must be made to the following TAADs: Exp. 55/2018, of the "working calendar" series; Ex. 58/2018, of the "monitoring and evaluation of the right of access to public information" series; Ex. 60/2018, of the "accountability of the Commission for the Guarantee of the Right of Access to Public Information" series; and Exp. 72/2018, of the series "assessment proposal files and documentary access"). These TAADs do not include the "Motivation" - which details the information discussed in each case - and "Legal Basis" sections. Although the inclusion of this second section might not be essential in these TAADs, since only "free access" is provided for, the information available does not allow knowing the personal data contained therein, nor can it be assessed re

We note that the Project includes two TAADs with the same number (CNAATD 69/2018), in one case, from the series "registrations to the Volunteer program for the language", and in the other, from the series "database of the registrations of Volunteering for the language". In the first table, the total elimination is foreseen in five years (without establishing the start of the calculation, although it could be understood that it refers to the formalization of the registration), and in the second, the "permanent conservation and deletion of personal data" in five years, and it also does not indicate when the calculation for the deletion of data begins. In any case, if the "registration database" (Table 2) is kept but the registrations are deleted in 5 years (Table 1), it is not clear, taking into account the information from both TAADs, which information of the database is planned to be kept perm

Finally, at a formal level, we note that in some TAADs "total elimination" is foreseen and, in other cases, "total destruction". It would be advisable to unify both expressions.

III

Having said that, reference will be made below to the forecasts relating to the conservation period of certain TAAD of the Project.

1). December 13, protection of

personal data." (as an example and among many others: Files 30/2017; 36/2018; 37/2018; 39/2018; 61/2018, etc...).

Without prejudice to the fact that, from 25 May 2018, some aspects regulated by Organic Law 15/1999, of 13 December (LOPD), may continue to be applicable in relation to the scope of Directive (EU) 2016/ 680 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of 'criminal offenses or execution of criminal sanctions, and the free circulation of this data and by which the Framework Decision 2008/977/JAI of the Council (which has not yet been transposed) is repealed, the processing of data from natural persons is subject to the provisions of the RGPD.

For this reason, at the outset, in relation to the TAADs referred to documentation that may contain personal data that the LOPD qualified as "specially protected", it would be appropriate to refer, where appropriate, to the provisions of article 9.1 of the RGPD, and not to article 7 of the LOPD. In addition, it should be borne in mind that the categories of data in Article 7 of the LOPD do not have an exact correlation with the special categories of data in Article 9.1 of the RGPD, a matter that should be taken into account care when determining whether a table contains special categories of data.

On the other hand, in different TAAD of the Project it is foreseen the permanent conservation of documentation which, according to the information available, may include special categories of data, for example, in File 34/2018, of the series: "records of bodies representing staff in the service of public administrations", without adding any details regarding the category of data. In line with what has been pointed out, this type of mention does not allow determining which categories of data the documentation includes, nor can it be assessed whether permanent conservation is appropriate, for the purposes of the aforementioned data protection principles.

Along the same lines, we refer to Exp. 61/2018, of the series "technical advice in the field of the family", which foresees the total elimination within 50 years once the technical intervention is finished. Taking into account the breadth of the matter covered in this table (counseling in the family sphere can cover very diverse issues and, therefore, also a treatment of very diverse types of personal data), the said term of 50 years could be excessive, at least in relation to certain personal information, for the purposes of the aforementioned data protection principles. In any case, the available information does not allow this extreme to be specified.

We also mention the Exp. 30/2018, of the "crime victim care file" series, provides for the permanent conservation of information, which may contain "data on limited or restricted subjects of minors", together with specially protected data . Again, knowing in some detail the categories of data processed (health data, data on administrative or criminal offenses or sanctions, data solely on the minor or also on his family environment, data on the minor's schooling...), would allow determine whether the retention of personal data must be permanent or whether, at least in relation to part of the information, due to its type or the groups of people affected, it may be advisable, from the perspective of protection of data, its elimination. The retention period of the documentation should not exceed that which, based on technical criteria and given the circumstances of each case, is necessary to ensure due attention to the victims. All the more reason, considering that in certain cases the information processed can even be stigmatizing for the

victims or third parties related to them and, therefore, the treatment of personal information must be particularly careful, as this Authority has pointed out, among others, in Opinion 51/2016.

Similar considerations can be made regarding the Exp. 25/2018, of the "subsidies for the promotion of eco-labelling, the guarantee badge and eco-design" series. In this case, the total destruction of the documentation is foreseen in 15 years. We agree that, depending on the category of data processed, taking into account the provisions of Law 38/2003, of November 17, General Subsidies (LGS), with reference to the prohibition periods to obtain the status of beneficiary (art. 13.2 LGS) or the limitation periods (art. 39 LGS), a lower retention period could be relevant.

2) In File 29/2017, of the "registry and custody of detained minors" series, of the competent department for police and town councils, the "permanent conservation with blocking of data until the moment of destruction" is foreseen, in a term of "three years".

According to article 32 of the LOPDGDD:

> **"1. The person responsible for the treatment will be obliged to block the data when it proceeds to its rectification or deletion.**
> **2. The blocking of the data consists in the identification and reservation of the same, adopting technical and organizational measures, to prevent its treatment, including its visualization, except for the provision of the data to judges and courts, the Ministry of Finance or the competent Public Administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the prescription period thereof.**
> **After that period, the data must be destroyed. (...).”**

Without prejudice to the reference to data blocking, which may be relevant under the terms of article 32 of the LOPDGDD, it must be noted that the information on conservation in this table seems contradictory, as permanent conservation is foreseen and , at the same time, the destruction of the documentation in three years. It does not seem to be a matter of "permanent conservation". This section should be clarified, taking into account the principles of minimization and limitation of conservation.

The same consideration must be made regarding Exp. 30/2017, from the "registry and custody of detainees" series.

3) In the Exp. 28/2018, of the series "consolidated discretionary service transport authorizations with reiteration of the itinerary and payment for the entire car", provides for the permanent preservation of the contract (and total destruction of the rest of the documentation), only for the authorizations transport of work centers and similar; not so with regard to school transport authorizations, in which the total destruction of all documentation is foreseen, and no mention is made, if applicable, of the conservation of the contract. Unless there are provisions in the regulations that justify the permanent conservation of the contract only in the first case, from the perspective of data protection it does not seem that differentiations should be established, given that the information processed would be the same . In any case, the principle of minimization and limitation of the conservation of processed data must be taken into

4) Regarding the table Exp. 31/2017, of the series: "telephone records", (competent department for police and town councils), total destruction is foreseen within 20 years (and blocking of data after 3 years). Regarding the processed information, it is foreseen that "mostly they may contain personal data relating to privacy and contain data on matters limited or restricted by investigation or sanction of criminal, administrative or disciplinary offenses (...)."

The table refers to a register of telephone calls, that is to say, to the conservation of the writings that contain what was transmitted by telephone that could refer, due to the information available, to interventions by police forces in very diverse areas.

Certainly, the impact on people's privacy can occur as a result of the processing of various categories of data. For this reason, without prejudice to the fact that it could be clarifying to specify which categories of data are those that are effectively treated, the mention of other fundamental rights deserving of protection, such as privacy, is clarifying regarding the personal information treated.

This table also contains data "on matters limited or restricted by investigation or sanction of criminal, administrative or disciplinary offences.". Apart from the incorrect citation of article 7 of the LOPD, already commented on, this table would encompass two categories of data that are not included in the special categories of data in article 9.1 RGPD, nor in the corresponding Directive (EU) 2016/680, and which are different categories in terms of their treatment: on the one hand, data relating to convictions and criminal offences, and on the other, data relating to administrative offenses and sanctions (art. 27 LOPDGDD). Although they are not special categories of data, they are assigned a specific regime for their treatment.

For all this, given the information available on this table, it is not possible to conclude that the 20-year term is appropriate, at least not in all cases or with respect to all the information discussed. The limitation periods provided for in the legislation should be taken into account, as well as the fact that the information refers to final judicial decisions or not, or the existence of appeals presented, for the purposes of determining the appropriateness of retaining or eliminating certain information in each case Therefore, in accordance with the principles of minimization and limitation of the retention period, it would be advisable to assess the possibility of keeping the information for a shorter period than planned, unless there are legal regulations that make it advisable to maintain this period.

Nor is there enough information to assess whether in the Exp. 33/2018, of the series "planning the training of public administration personnel", in which it is foreseen that there will be "merely identifying" data and, occasionally, data "that are not particularly protected", permanent conservation is necessary of the documentation, and for what purposes.

5) In the table Exp. 74/2013, of the series "emergency health actions at the request of the Mutuals of Work Accidents and Occupational Diseases", the total destruction is foreseen in 5 years, and that the table may contain data "that are not particularly protected nor merely identifying". This wording does not allow us to infer what these other categories of processed data would be, nor is it clear whether specially protected data is processed. Apart from the fact that, as has already been said, more clarifying formulas could be used regarding the types of personal data that are treated in each case, in this particular case the wording does not allow the treatment of

health data (art. 9.1 RGPD). According to the health information in question, by application of the patient autonomy legislation (Law 21/2000 of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation , and Law 41/2002, of November 14), its conservation may be necessary for a period exceeding 5 years. In any case, the information available does not make it possible to determine whether the planned retention period of 5 years is adjusted to the patient autonomy regulations.

6) The table Exp. 12/2019, from the series "plans for the prevention of occupational risks", provides for the processing of merely identifying data, and its permanent conservation. According to article 16.2, of Law 31/1995, of November 8, which regulates the prevention of occupational risks, "(...) Prevention activities must be modified when deemed appropriate by the employer, as a result of the periodic controls provided for in paragraph a) above, their inadequacy to the required protection purposes."

Given this, and in line with the predictions in Table Exp. 14/2019, of the "technical emergency plans" series (which provides for the elimination three years after the modification of the plan), it could be assessed, where appropriate, the conservation for the period that may correspond taking into account the duration of the validity of the plan and the prescription of responsibilities in relation to it, taking into account the regulatory provisions that result from application.

7) The table Exp. 10/2018, of the "technical and sanitary certification of medical transport vehicles" series, provides for total destruction at 14 years of age. Article 8.1 of Decree 182/1990, of July 3, which regulates medical transport in the territorial area of Catalonia and establishes the technical requirements and minimum conditions that ambulances must meet for their authorization as a healthcare service, provides the following:

> **"8.1 In order to carry out medical transport, it will be necessary to obtain the corresponding administrative authorization in advance, granted by the General Directorate of Transport of the Department of Territorial Policy and Public Works, either for public transport, for private transport or for in official transport. Authorizations must refer to a specific vehicle. Health transport authorizations will be granted for a period of five years, which can be extended for another 2 years depending on the technical condition of the vehicle."**

Therefore, for the purposes of the principles of minimization and limitation of conservation, cited, unless there are other regulations that justify the 14-year duration foreseen, a lower conservation period could be foreseen.

8) The Exp. 73/2018, of the series "assessment files of individual teaching merits and management of teaching and research staff of universities", provides for the permanent conservation of various documentation, among others, provisional resolution of admitted and excluded, definitive lists of those admitted and excluded, evaluation proposals, etc., which, without prejudice to being relevant during a personnel selection process, once this has been concluded it does not seem that these documents

In this sense, we note that in the Exp. 20/2019, of the "selection of public employees" series, of a similar type to the previous one, only the permanent conservation of the acts and agreements of the qualifying tribunal, among other documents, is fores

the total elimination of the instances, provisional lists and tests, once the resolution of the call and the appointment or contract of the staff is finalized, a provision that seems more in line with the principles of data protection.

9) In the following TAAD: Exp. 51/2018, of the series "cases for extraordinary services"; Ex. 19/2019, of the "direct selection of the public employee" series; Ex. 18/2019, (code 137), from the "job applications" series; Ex. 42/2018 (code 287), from the series "advertisement communications for medicines (...)", and Exp. 5/2019 (code 79), from the "urban use certificates" series, it is not indicated when the calculation of the period indicated in each case, for the destruction of the documentation, begins.

A clarification regarding the calculation of the term would also be appropriate, in Exp. 54/2018, of the series "identification of personnel in the service of the Public Administration". Although total destruction is foreseen "when the established period of use has expired". Given that this identification appears to include personal data that is not merely identifying (but not specified), it is not clear what kind of identification it is and therefore what the term of use would be refer to the table

IV

The TAAD of the Order Project include the access regime that is considered applicable in each case.

According to article 34.1 of Law 10/2001:

> **"1. People have the right to access public documents under the terms and conditions established by Law 19/2014, of December 29, on transparency, access to public information and good governance, and the rest of the regulations that are applicable. "**

As this Authority has agreed on previous occasions, the provision for access made in the Draft order for each TAAD is an indicative indication, given that in accordance with the regime established in the state and Catalan legislation of transparency, access to public information and good governance (Law 19/2013, of December 9 (LT), and Law 19/2014, of December 29 (LTC), respectively), the possibility of granting access or not to a document will not depend on the form as it is collected in this section of each TAAD, but on the existence of any applicable limit of those provided by the transparency legislation, mentioned, or by other rules with the rank of law.

Article 5.1.a) RGPD establishes that all processing of personal data (art. 4.2 RGPD) must be lawful, loyal and transparent in relation to the interested party. In order for the treatment, in particular, the access by third parties to the personal data contained in the documentation referred to in the TAAD, to be lawful, one of the conditions provided for in article 6 RGPD must be met and also it is necessary to take into account article 9 RGPD, in the case of special categories of personal data.

In any case, it must be reiterated that the TAADs contain initial guidance which, without prejudice to the fact that the resolution of specific access requests requires analyzing the concurrent circumstances in each case, offers initial information on the applicable regime.

Having said that, it is necessary to refer to some issues that affect a large part of the TAADs included in the Draft Order that we are analyzing.

1. In line with what has been pointed out regarding the applicable data protection regulations, in those TAADs (such as, simply as an example, Exp. 49/2018, of the "compensation of tax debts" series ") in which article 7 of the LOPD is mentioned, it would be appropriate, where appropriate, to refer to the provision of the RGPD that is relevant. This consideration is extended to the rest of TAAD that include the same mention.

In several TAADs, reference is made, regarding the access regime, to: "free access. In case there is a limit that must prevail, partial access." (For example, Exp. 4/2017, 32/2018, 33/2018, 12/2019, 13/2019, 16/2019, 28/2018 and 39/2018, among many others).

As has already been said on previous occasions, in accordance with the regime established in the transparency legislation (LT and LTC), which is based on the existence of a general rule, such as access to all the public information, and of limits that may lead to a limitation of access, the consequence of the concurrence of some limit must not always and necessarily be partial access, but could also be the total denial of the access, in those cases where partial access does not allow safeguarding the limit that must prevail.

For this reason, an expression similar to "free access unless there is a limit that must prevail" could be more adjusted to the transparency regulations. This formula does not presuppose whether the limit will lead to partial access or denial of access.

Nor does the information in the access regime section of the Exp. 10/2019 (code 99), from the series "sanctioning files for minor infractions in matters of urban planning", which provides: "restricted access to sanctioning files for physical persons and free access with restrictions in the case of sanctioning files for individuals legal.". From the perspective of data protection, it should be noted that in the files sanctioning legal entities there may probably be data of natural persons, in respect of which restricted access may also be relevant.

Having said that, in most of the rest of the Project's TAAD (for example, Exp. 29/2017, 31/2017, 34/2018, 35/2018, among others), in which there is mostly information of special categories or that affect privacy according to the information available, the formula "restricted access, without prejudice to partial access" is used, while in others the formula "restricted access, without prejudice to partial access if it does not result in distorted or nonsensical information" (for example, in Exp. 19/2018 or 21/2018, related to environmental matters).

These forecasts seem to refer to the guidelines that article 25 of the LTC provides for partial access to public information and documentation. It does not seem clear the reason for using one or another formula, and not the same in all cases.

Without prejudice to this, we reiterate the consideration made in the sense that the resolution of specific access requests will require analyzing the concurrent circumstances in each case, to determine access to information.

2. Still in relation to the access regime provided for in the transparency legislation, we note that in several TAAD of the Project (among many others, Exp. 36/2018), mention is made of: "Validity of the restriction: (...) for specially protected data, this exclusion ceases to have effect 25 years after the death of the person concerned and, if the date is unknown, 50 years after the production of the document. To

the rest of the personal data, this exclusion ceases to take effect 30 years after the production of the document". In other cases (such as Exp. 16/2019), it is simply provided that "this exclusion ceases to have effect 30 years after the production of the document." Thus, exclusion is foreseen for 30 years, when the documentation only contains "merely identifying data related to the organization, operation or public activity of the Administration." In other cases (for example, Exp. 19/2018), although there would be "limited or restricted subject data", only the 30-year period is mentioned, and not the 25/50 periods years, in the event that special categories of data are processed.

In any case, these temporary restrictions on access correspond to the provisions of article 36.1 of Law 10/2001, according to which:

> **"1. In a general way, the legally established exclusions regarding the consultation of public documents cease to have effect thirty years after the production of the document, unless specific legislation provides otherwise.**
> **If these are documents that contain personal data that may affect the security, honor, privacy or image of people, as a general rule, and unless specific legislation provides otherwise, they may be subject to public consultation with the consent of those affected or when twenty-five years have passed since their death or, if the date is not known, fifty years since the production of the document."**

As has been mentioned on previous occasions, it should be borne in mind that article 22.2 of the LTC provides that:

> **"2. The limits of the right of access to public information are temporary if so established by the law that regulates them, and they remain as long as the reasons that justify their application last.**

Thus, we remind you that, in accordance with the transparency legislation, the limits are only temporary "if so established by the law that regulates them."

Having said that, in TAAD like that of the Exp. 16/2019, of the "public employment offer" series, which only contains identifying data related to the organization, operation or public activity of the Administration, it does not seem necessary to recall the lifting of the exclusion at 30 years, precisely because according to article 24.1 of the LTC it can no longer be considered that access is excluded before this term.

Regarding the Exp. 16/2019, of the "public employment offer" series, total destruction is foreseen in four years. However, the mention, in the same table, that the exclusion of access "becomes without effect 30 years after the production of the document", does not seem consistent with the forecast of destruction provided for in the same table. It would therefore be appropriate to clarify this point.

For all this the following are done,

Conclusions

Having examined the draft order approving, modifying and repealing evaluation tables and document access, it is considered adequate to the provisions established in the regulations on the protection of personal data, as long as they are taken into account the considerations made in this report.

Barcelona, July 9, 2019