

IAI 22/2020

**Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against the refusal by a Department of a copy of the waste incineration plant project of a municipality**

**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 in relation to the refusal by a Department to copy the draft the waste incineration plant in a municipality.**

Having analyzed the request, which is accompanied by a copy of the file of the claim submitted, in accordance with the report of the Legal Counsel, the following is reported:

#### **Background**

- 1. On January 29, 2020, the representative of an environmental association submitted a letter to a Department of the Generalitat by which she requested a copy of the entire project for a waste incinerator plant in a municipality, regarding for which a company has requested the corresponding environmental authorization. In the same letter, it requests that the association it represents be considered as a party in the environmental authorization procedure, as well as agreeing to the immediate inadmissibility of the authorization request due to the insufficiency and non-suitability of the municipal urban report.**
- 2. On July 14, 2020, the interested party filed a claim with the GAIP against the Department given that, although she had received a response to her request, she had not been given access to the requested information.**
- 3. On July 17, 2020, the GAIP requests from the Department, a report in relation to the claim presented, the complete file relating to the request for access to public information and the identification of the third parties people who are affected by the claimed access.**
- 4. On July 31, 2020, the Department sends to the GAIP, in addition to the report in which the procedures carried out in the processing of the environmental authorization are related, the enumeration of the documentation that was accompany the request by the requesting company, identifying it as a third party affected by the access request. In the report it is stated that the company would have declared the confidentiality of the data contained in the requested documentation "referring to natural persons, data, deeds of companies, protected by the Data Protection Law".**
- 5. On September 2, 2020, the GAIP addresses the request for a report to this Authority in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance.**

## 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.

For this reason, 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, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (art. 4.1 of Regulation 2016/679, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and by which Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

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.

It must be taken into consideration that in the access request, in addition to the aforementioned documentation, it is requested that the ecological association that presents it be considered and taken into account as a party in the environmental authorization procedure.

In this regard, it must be said that, pursuant to the provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority, it is not up to this Authority to pronounce on the condition or not an interested party in the referred procedure, even though the fact that the applicant enjoys the status of an interested party in the procedure has an impact on the regime applicable to access to information. Therefore, this question will be analyzed only for these purposes.

For this reason, this Authority will not rule on the requests of the association before the Department to be considered as a party in the environmental authorization procedure, as well as agreeing to the immediate inadmissibility of the authorization request, or any other limit other than the protection of personal data.

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

The data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, apply to the treatments that are carried out on personal data, that is, all information that alludes to a natural person of form that identifies it, or makes it identifiable. On the contrary, and in accordance with the provisions of recital 14, the RGPD "does not regulate the processing of personal data relating to legal entities and in particular to companies incorporated as legal entities, including the number and form of the legal entity and your com

Consequently, there must be no inconvenience from the perspective of data protection regulations in providing the interested party with the information referred to the legal entity that has requested the environmental authorization and that may be included in the requested document

Article 4.2) of the RGPD considers "treatment": any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction".

All processing carried out on personal data must be lawful by virtue of what is established in article 5.1.a), and in this sense, the RGPD establishes the need to comply with one of the legal bases provided for in article 6.1, among which is section c) for the assumption that the treatment "is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

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 of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation".

The regulation and guarantee of public access to official documents held by public authorities or public bodies is located in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), which recognizes individuals, individually or in the name and representation of any legally constituted legal person, the right of access to public information. As such, it is understood that it is "the information prepared by the Administration and that which it has in its power as

consequence of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law" (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

Therefore, the information related to the request for environmental authorization, regarding the project of the waste incineration plant in a municipality, is information that must be considered public according to what is provided in the article 2.b) of the LTC

### III

The object of the complaint is access to all the documentation relating to the request for environmental authorization, in respect of a waste incineration plant.

To begin with, the first additional provision of the LTC states that:

"1. The access of those interested to the documents of the administrative procedures in progress is governed by what is determined by the legislation on the legal regime and administrative procedure.

2. 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 sense, the first additional provision of the LT also provides that:

"1. The regulations governing the corresponding administrative procedure will be applicable to access by those who are interested in an ongoing administrative procedure to the documents that are part of it.

2. Those matters that have a specific legal regime for access to information will be governed by its specific regulations, and by this Law with a supplementary character.

3. In this sense, this Law will apply, to the extent not provided for in its respective regulatory rules, to access to environmental information and to information intended for reuse."

Therefore, in the event that the request for access to information contained in an administrative procedure in a matter that has a specific regime regarding access, it must be processed and resolved within the framework of corresponding administrative procedure applying the regulations governing this.

In the case at hand, the specific administrative procedure is regulated in Law 20/2009, of December 4, on prevention and environmental control of activities (LPACA), which aims to establish "the administrative intervention system of activities with an environmental impact, in which the effects on the environment and people are taken into consideration" (article 1), and provides for the regime and procedure of the environmental authorization from article 12 et seq.

With regard to the information that forms part of these procedures, access to information related to the environment has a specific access regime provided for in Law 27/2006, of July 18, by which they regulate the rights of access to information, public participation and access to justice in environmental matters (hereafter LAIA).

Article 2.3 of the LAIA defines "environmental information" in the following terms:

"3. Environmental information: all information in written, visual, audio, electronic or any other form that relates to the following issues: a) The state of the elements of the environment, such as air and atmosphere, water, soil, the earth, landscapes and natural spaces, including wetlands and marine and coastal areas, biological diversity and its components, including genetically modified organisms; and the interaction between these elements. b) The factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, spills and other releases into the environment, that affect or may affect the elements of the environment mentioned in letter a) . c) Measures, including administrative measures, such as policies, rules, plans, programs, environmental agreements and activities that affect or may affect the elements and factors mentioned in letters a) and b), as well as the activities or the measures intended to protect these elements. d) Reports on the execution of environmental legislation. e) The analyzes of the cost-benefit relationship and other analyzes and assumptions of an economic nature used in the decision-making related to the measures and activities cited in letter c), and f) The state of health and security of the people, including, as the case may be, the contamination of the food chain, human living conditions, goods of historical, cultural and artistic heritage and constructions, when they are or may be affected by the state of the environmental elements mentioned in letter a ) or, through those elements, by any of the extremes mentioned in letters b) and c)."

Therefore, in the case at hand, it seems appropriate to consider that the provisions of the LAIA must be applied to the request for public information and, additionally, where not provided for by the LAIA, those of the LTC.

#### IV

The LAIA recognizes the right of people to "access environmental information held by public authorities or by other subjects on their behalf, without being obliged to declare a specific interest, whatever their nationality, domicile or headquarters" (article 3.1).a)).

Although in its report of July 30, 2020 the Department, for the purposes of processing the procedure, considers the status of an interested party in the corresponding administrative procedure not accredited, given that it had not been accredited that the association had been incorporated more than two years as required by article 3.19.b) of Royal Legislative Decree 1/2016, of December 16, approving the revised text of the Law on Prevention and Integrated Control of Pollution, or the article 23.1.b) of the LAIA with regard to the exercise of public action, the right of access recognized to the environmental regulations is not conditional on er

In any case, the right of access to environmental information is considered as a non-absolute right of the applicant, but is foreseen, in article 13 of the LAIA, the regime of exceptions that the public authority can invoke to deny the request. Specifically, with regard to personal data, section 2, point f), provides that requests may be denied if the disclosure of the requested information may negatively affect "the confidential character of the personal data , as regulated in Organic Law 15/1999, of December 13, on the Protection of Personal Data, provided that the person concerned has not consented to its treatment or disclosure." (Article 13.2. f).

However, it must be borne in mind that it is the LAIA itself which, right after, expressly demands that the reasons for denying access to environmental information be interpreted restrictively, in such a way that it is weighed in each specific case the public interest served by its disclosure with the interest served by its denial (article 13.4).

In the case at hand, the object of access is a copy of the entire project submitted with the request for environmental authorization for an incinerator plant. Article 17 of the LPACA identifies the documentation that must accompany an environmental authorization request, which will include:

a) Environmental impact study of the project, which must contain, at least, the information detailed in article 18, signed by the competent technical staff. b) Basic project, signed by the competent technical staff, containing the detailed description and scope of the activity and the facilities. The sectoral regulations of the different administrations with powers of administrative intervention and, where applicable, the technical rules that establish the content of the activity project, determine its specific content. c) Mandatory documentation on serious accidents determined by the corresponding sectoral legislation. d) Urban planning report from the town hall where the activity is to be located, established by article 60, which certifies the compatibility of the activity with urban planning, and the availability and sufficiency of the public services required the activity e) Characteristics of the soil in which the planned activity is located, provided that this activity is defined as potentially contaminating the soil by the applicable specific regulations. f) Designation, by the person in charge of the activity, of the technical staff responsible for the execution of the project. g) Declaration of the data that, at the discretion of the person requesting it, enjoy confidentiality in accordance with the fifth additional provision of the revised text of the Environmental Impact Assessment Law, approved by Royal Legislative Decree 1/ 2008, of January 11, and with the rest of the legislation on the matter. h) Any other documentation that is determined by regulation or that is required by the sectoral legislation applicable to the activity.

2. In the event that, along with the environmental authorization, the authorization of greenhouse gas emissions is also requested, the documentation established by State Law must be attached to the request 1/2005, of March 9, which regulates the trading regime for greenhouse gas emission rights. (...) "

In addition, when the activity is subject to an environmental impact assessment, the documentation that must accompany the application, in accordance with article 18 of the LPACA, must contain the following documents :

"a) General description of the project and foreseeable requirements in time, in relation to the use of land and other natural resources. Estimation of the type and amount of waste dumped and the resulting emissions of matter or energy, and description of the receiving environment. b) Presentation of the main alternatives studied and justification of the solution adopted, taking into account the use and application of the best available techniques and the environmental effects. c) Evaluation of the predictable, direct and indirect effects of the project on the population, flora, fauna, soil, air, water, both terrestrial and maritime, climatic factors, the landscape and material goods, including cultural heritage. Equally, the interaction between all these factors and the possible cross-border effects, between municipalities or between autonomous communities, must be taken into account. d) Measures established to reduce, eliminate or compensate for significant environmental effects. e) Environmental monitoring program. f) Acoustic impact study. g) Description of the characteristics of the exterior lighting."

So, from the documentation that would have been attached to the application for environmental authorization, its eminently technical nature can be seen, so that, a priori, it does not seem that access to said documents could affect personal data, beyond the identifiers of the authorities or public positions that have participated in the content and development of the mandatory documentation.

With respect to the identification data of the persons who have been assigned the competence to issue mandatory reports that may be contained in the requested information, and in the absence of specific provision in the environmental legislation, the provisions can be taken into consideration article 24.1 of LTC according to which: "access must be given to public information if it is information directly related to the organization, operation or public activity of the Administration that contains personal data merely identifiers unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail". Accordingly and, except in exceptional cases in which it is necessary to preserve the privacy of these, access to information containing merely identifying data of employees or public officials can be facilitated.

With respect to the identification data of the technicians who sign the projects or other reports that make up the documentation that accompanies the environmental authorization request, it cannot be considered that their identification data should require specific protection or confidentiality, especially if takes into account that, with regard to your identifying data (name and surname and membership number) and profession, this is information that the corresponding professional associations must already make public.

Finally, in relation to the data of the people representing the company that may appear in the requested documentation, they should not, in principle, require specific protection or confidentiality. However, the application of the minimization principle of Article 5.1.c) of the RGPD according to which the data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated, would lead us to conclude that the

**purpose pursued by environmental regulations and transparency regulations regarding access to environmental information could also be achieved without the need to sacrifice the privacy of these people.**

**Likewise, by application of this principle of minimization, it would be necessary to omit beforehand from the requested documentation, those identifying data that could be contained in it (such as the NIF, telephone numbers, electronic addresses, or the private addresses that could be contained in it), which are unnecessary to achieve the purpose pursued.**

#### **conclusion**

**The data protection regulations would not prevent access to the entire project of a waste incineration plant, without prejudice to the application of the minimization principle to omit from this information the identifying data of the natural persons who represent the company requesting the environmental authorization, as well as the NIF, telephone numbers, electronic addresses, or the private address listed there and which are unnecessary to achieve the purpose pursued.**

**Barcelona, September 14, 2020**