

IAI 23/2020

**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 for the denial of access to a copy of the judgments in which a local body has been a party in the matter of the tax on the increase in the value of land of an urban nature notified by the Administrative Contentious Courts of Barcelona between 01/01/2020 and 07/31/2020**

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 denial of access to copy copy of the judgments in which a local entity has been a party in the matter of the tax on the increase in the value of urban land notified by the Administrative Disputes Courts of Barcelona between 01/01/2020 and 07/31/2020 .

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, in accordance with the report of the Legal Counsel I issue the following report:

#### Background

1. On August 1, 2020, a citizen submitted to a local body a request for access to the following information: "In accordance with the Transparency Law, I am interested in facilitating, duly dissociated from personal data, copy of all judgments in which it has been a party(...), in the matter of Tax on the Value of Urban Nature Lands, notified by the administrative contentious courts of Barcelona, between 01/01/2020 and on 31/07/2020".
2. On September 3, 2020, the local body notifies the citizen of the resolution rejecting the request for access to information "given the large volume of information requested with a simple temporary limitation, the need to carry out a complex prior reprocessing action to dissociate the personal data and also to analyze if they contain information affected by tax secrecy or access to which harms any of the interests provided for in article 14 LTAIBG, and the fact that the criteria and doctrine of the different courts and tribunals are public and easily accessible, in accordance with the antecedents that appear in the file".
3. On September 3, 2020, the citizen submits a claim to the GAIP against the local authority for the denial of access to the requested information.
4. On September 17, 2020, the GAIP sends this Authority the file relating to the claim and requests a report in relation to the request 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.

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.

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 claimant requests from the local body, as stated in the documentation accompanying the claim, which is reproduced in antecedent 1 of this report, that "In accordance with the Law of Transparency, I am interested in providing, duly dissociated from personal data, copy of

all the judgments in which he has been a party (...), in the matter of Tax on the Value of Urban Nature Lands, notified by the Administrative Courts of Barcelona, between 01/01/2020 and 31/ 07/2020".

First of all, it must be taken into consideration that the communication of information containing personal data is data processing that must be adapted to the principles of the RGPD.

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency). In accordance with article 6.1 of the RGPD, in order to carry out a treatment, it is necessary to have a legal basis that legitimizes this treatment, either the consent of the affected person, or any of the other circumstances, such as "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c).

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

At the same time, 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, body or entity in accordance with the Law of the Union or of the 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."

Article 18 of Law 19/2014 (hereafter LTC), establishes that "people have the right to access public information, referred to in article 2.b, individually or on behalf of representation of any legally constituted legal person" (section 1).

Article 2.b) LTC defines "public information" as "the information prepared by the Administration and that which it has in its possession 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".

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

To warn that, even though the judgments of the administrative contentious courts of Barcelona claimed, are not information prepared by the local body, insofar as it is information in its possession for having intervened in these judicial processes as a party, it would be public information in accordance with the definition of article 2.b) LTC, and therefore, it would be subject to the right of access (art.18 LTC).

The right of access is not an unlimited right, but in accordance with article 20 et seq. of the LTC, this right can be denied or restricted for the reasons expressly established in the laws, in particular, if the information contains personal data, the provisions of articles 23 and 24 of the same rule must be applied.

However, in the case at hand, the claimant requests previously dissociated information, that is to say by removing from it the personal data that may be contained in it, in such a way that, stripped of the personal information it may contain, data protection regulations would not prevent access to the information subject to the claim.

#### IV

On the other hand, it must be taken into consideration that within the obligations of active advertising contained in article 10 of the LTC, regarding transparency in decisions and actions of legal relevance, letter h) of the first section of this article requires the administrations to make public "Administrative and judicial resolutions that may have public relevance and final judicial resolutions that affect the persons obliged to comply with this law and the draft regulations."

Regarding the scope of the publicity of judicial resolutions, it must be taken into account that both the Spanish Constitution (art. 120) and the Organic Law of the Judiciary (art. 232.1) contain the general principle of the publicity of judicial proceedings, despite this, this principle is nuanced in the same Organic Law of the Judiciary when it limits access to judicial proceedings to interested parties (art. 234.2) although this publicity must be put in connection with the right of parties to effective judicial protection by Judges and Courts.

It is the same Organic Law of the Judiciary as in article 235 bis which expressly regulates that "access to the text of the sentences, or to certain ends of them, or to other resolutions dictated in the course of the process, can only be carried out previous dissociation of the personal data that they contained and with full respect for the right to privacy, the rights of persons who require a special duty of protection or the guarantee of the anonymity of the victims or injured parties, when applicable".

Exceptions to this rule are included in article 235 ter of the Organic Law of Power Judicial, which provides for:

"1. Access to the personal data contained in the judgments of the final convictions, when they had been handed down under the crimes provided for in the following articles, is published:

a) Articles 305, 305 bis and 306 of Organic Law 10/1995, of November 23, of the Penal Code.

b) Articles 257 and 258 of Organic Law 10/1995, of November 23, of the Penal Code, when the defrauded creditor had been the Public Treasury.

c) Article 2 of Organic Law 12/1995, of December 12, on Smuggling Suppression, provided that there is a detriment to the State Public Treasury or the European Union.

2. In the cases provided for in the previous section, the Judicial Secretary will issue a certificate in which the following data will be recorded:

- a) Those that allow the identification of the judicial process.
- b) Name and surname or corporate name of the convicted person and, where appropriate, of the civil liability.
- c) Crime for which he had been convicted.
- d) The penalties imposed.
- e) The amount corresponding to the damage caused to the Public Treasury in all respects, as established in the sentence.

Through ordering diligence, the Judicial Secretary will order its publication in the "Official Bulletin of the State".

3. The provisions of this article shall not be applicable in the event that the convicted person or, as the case may be, the civil liability, had paid or consigned to the account of deposits and consignments of the competent judicial body the entire amount corresponding to damage caused to the Public Treasury in all respects, prior to the finality of the sentence".

It cannot be forgotten either that the data protection regulations give special consideration to information relating to the commission of criminal offences, so article 10 of the RGPD establishes that:

"The treatment of personal data relating to convictions and criminal offenses or related security measures on the basis of article 6 section 1, can only be carried out under the supervision of public authorities or when authorized by the Law of the Union or Member States that establish adequate guarantees for the rights and freedoms of those interested. A record of criminal convictions can only be kept under the control of the public authorities."

And, if we look at the transparency regulations, article 23 of the LTC establishes that requests for access to information must be denied if "the information to which access is sought contains particularly protected personal data, such as those relating to ideology, trade union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand in the infringer, unless the affected party expressly consents by means of a written document that must accompany the request".

In the aforementioned regulations, there is an obligation to actively publicize judicial decisions under the terms of article 10.1.h) of the LTC, publicity that will be subject to the same limits established by article 20 et seq. of the LTC, especially the relating to the protection of personal data, as established in article 7.1 of the LTC.

Therefore, public administrations, in the publication of information relating to judicial decisions that affect them, must carry out this task of anonymizing the personal data contained therein.

**It should be borne in mind that, in order for the anonymization to be considered sufficient for the purposes of the data protection regulations, public administrations must remove information that allows the individuals affected to be identified directly or indirectly.**

### **Conclusions**

**The data protection regulations would not prevent the claimant's access to the judgments in which the local entity has been a party, in the matter of the tax on the increase in the value of urban land, notified by the administrative contentious courts of Barcelona during the requested period, with the prior dissociation of the personal data contained.**

**Barcelona, 2 October 2020**

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