

IAI 25/2020

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 partial estimate by a copy Department relating to the public aid granted to the residents of a certain property.

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 partial estimate by a Department of relative copy to the public aid granted to the residents of a certain property.

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 July 27, 2020, a letter is submitted to a Department in which it is requested, without determining a time interval, the "copy relating to public aid (for the payment of rent or any other), where the addressees are the residents of the home [...]", referring to a specific property.

2. On August 20, 2020, the Department notifies a resolution through which it partially approves the request for access to public information in the following terms:

"People have the right to request and access public information, unless there are legal limits that must prevail; in this case, the limit that would predictably have to be applied [...] would be that of the protection of specially protected personal data (article 23 LTAIPBG).

Any information relating to identified or identifiable natural persons (such as the address of a natural person), is subject to and protected by data protection regulations.

Therefore, we cannot provide information about a person without the express and written consent of the affected person, which must be included in the letter attached to the request.

We also inform you that [...] processes the non-contributory pension supplement for people who live in rent.

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As it is a benefit of subjective law, we also point out that it is not possible to locate a benefit that a person can receive by the address.

We attach a link where you can find all the information about the add-on and its compatibilities:

[https://\[...\]](https://[...])

We also inform you that we have transferred [...] your request and have been told the following:

- [...] the home referred to by the applicant is not officially protected. And [...] reports that they have no record of having granted aid of a public nature to a home of [...]."

3. On September 1, 2020, the applicant submits a claim to the GAIP against the Department arguing that, although he had received a response to his request, not all the information requested had been provided and considers that "it is perfectly compatible with said regulations to provide the requested information (relating to public subsidies that are received in the flat), anonymizing the recipient natural persons, which vary". He also explains that, with respect to the statement attached to the Department's resolution regarding "the housing is not of official protection", on August 22, 2020 "I asked to complete this information by providing a copy of the answer in original support, without the delivery having taken place".

4. On September 2, 2020, the GAIP requests from the Department a report in relation to the claim presented, which includes the foundations of its position, the complete file relating to the request for access to the public information and the identification of third parties affected by the requested access.

5. On September 16, 2020, the Department sends the GAIP a report stating the following:

- Providing the requested information without the express and written consent of the affected person violates the data protection regulations, since "This type of aid is granted to people due to social vulnerability and must be preserved the identity of the beneficiaries, which is why we told him that he needed to attach the consent of the affected person".
- The provision to which access is requested is of subjective right and it is not possible to locate it through an address. On the other hand, with respect to the compatibility claimed by the applicant if access occurs by anonymizing the recipients of the benefit, it is based on the fact that "the address is personal data and can easily be identified to the person who lives at home".
- With regard to the request for a copy of the response, it is alleged that he did not understand the request when it indicated that "the delivery did not take place" and that he did not know whether the applicant had sent any writing.

6. On September 21, 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.

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 those treatments that are carried out on personal data, that is to say, that "information about an identified natural person or identifiable ("the interested party"); an identifiable natural person shall be considered 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 own elements

of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person"

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 found in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), which recognizes people's right of access to public information, understood as such "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 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).

In the case we are dealing with, the LTC applies to the claim since the requested documentation, related to the public aid granted to the residents of a certain building, would be in the possession of the Administration in exercise of their powers, being subject to the access regime provided for by the LTC.

This right, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the limitations and criteria provided for in the transparency legislation (articles 23 and 24 of the LTC), and the principles of the regulations for the protection of personal data

According to the documentation contained in the file, the Department's resolution would be based on the limit to access to public information provided for in article 23 of the LTC regarding the denial when the information to which intends to access contains particularly protected personal data. This foundation would be based on the fact that the aid granted to people responds to situations of social vulnerability which would require the preservation of their identity and, consequently, the need to have attached to the application the consent of those affected.

Regarding this, article 23 of the LTC provides that "Requests for access to public information must be denied if the information 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 to the offender, except that the person affected expressly consents to it by means of a written document that must accompany the request."

It should be remembered that the claimant requests access to the information relating to the aid received without expressly specifying the scope or characteristics of the aid that she is interested in knowing ("aid for the payment of rent or any other"), beyond justify the need for this access in order to "find out the compatibility of these aids with income from the subletting of rooms (prohibited in officially protected housing) and illegal lodging". Therefore, the request for access would not be limited to a certain framework or scope of the aid received, which means that there is no single specific regulatory regime, given that the legal regime of each aid is regulated independently.

From the documentation that the Department has with respect to the claimant's request, we could deduce that the circumstance she alleges could occur in cases where the data provided could be related to the specific requirements that are requested in order to obtain these aids, and that circumstances that refer, directly or indirectly, to ideology, trade union affiliation, religion, beliefs, racial origin, health, sex life or information related to the commission could be deduced from these requirements of criminal or administrative offenses of the beneficiaries. But it does not seem that this conclusion can be reached in a generalized way with respect to all aid, because even if the aid has been granted due to some situation of social vulnerability, the automatic application would not follow from this of article 23 LTC, but it would be necessary for the requested information to contain data from one of the aforementioned categories.

In any case, if any of the aforementioned categories of data were to apply, by application of article 23 of the LTC, access to the information would have to be denied.

#### IV

Beyond the cases in which the information provided to the applicant could reveal personal information of the beneficiaries of special categories of data, with respect to the rest, access is governed by the provisions of article 24.2 LTC:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and

rights of the affected persons. To carry out this weighting, the following circumstances must be taken into account, among others:

- a) The elapsed time.
- b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.
- c) The fact that it is data relating to minors.
- d) The fact that it may affect the safety of people.”

It must be borne in mind that, for the purposes of the weighting established by article 24 of the LTC, we are dealing with a matter (subsidies and public aid) which is governed by the principle of public access. In this sense, article 15 of the LTC establishes a detailed regulation regarding the advertising of subsidies and public aid in the following terms:

“1. The information relating to subsidies and public aid that the obliged subjects must make public in application of the principle of transparency must include: [...] c) The subsidies and public aid granted, with the indication of the amount, the object and the beneficiaries. This information must include grants and aid, must be up-to-date and must refer to the last five years. It must also include subsidies and grants awarded without advertising and competition if these requirements have been exempted, in the cases established by law. In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved. [...]”

This precept expressly enables the disclosure of information on subsidies and public aid granted regarding the amount, the object or purpose and the identity of the beneficiaries, in order to enable citizens to know exactly who receives a subsidy, what amount and what is it for? However, it is expressly provided for the preservation of the identity of the beneficiaries of those subsidies and public aid that are granted for reasons of social vulnerability, a fact that denotes the intention of the regulations to preserve their identity on the basis of the expectation that your identity will not be disclosed to third parties in an indiscriminate manner to fulfill transparency purposes.

In the request, a copy of the entire file is not requested, but a "copy of the aid", which seems to be able to deduce that what is intended to be obtained is a list of the aid.

In any case, and aside from the fact that depending on what the object of the aid is, this relationship could contain data of special categories in accordance with what is established in article 23 LTC, a matter to which we have already referred, they may also contain other categories of personal data deserving of a special reservation or confidentiality in view of the concurrence of certain qualified circumstances, such as, for example, data of minors, data related to gender violence, unemployment situations, etc.

It is, therefore, information deserving of a special reservation or confidentiality, since it must be borne in mind that it could reveal the existence of a situation of special need. It seems clear that these circumstances can act as a limit to the citizen's right of access - which is

configured, according to the preamble of the LTC itself, as a right that complements the information that the citizen can obtain through transparency - in the event that the relevance of the specific identification of these people is not sufficiently proven.

It should be borne in mind that although the right of access "is not conditional on the concurrence of a personal interest, it does not remain subject to motivation and does not require the invocation of any rule" (art. 18.2 LTC), for the purposes of power make a careful weighting between the different rights and interests at stake that emanate from article 24 LTC, knowing the specific purpose for which you want to access the information is a relevant element.

The claimant requests access to the information in order to "find out the compatibility of these grants with income from the subletting of rooms (prohibited in officially protected housing) and illegal lodging".

The requested access is carried out in a generalized way, in time, and indiscriminately with respect to all types of aid related to one or more people.

The mere desire to find out the compatibility of aid with income derived from alleged subletting of rooms and illegal lodging, without providing any other additional information, cannot justify revealing the identity of the people who have turned out to be beneficiaries of care aid to situations of social vulnerability.

It should be borne in mind that data protection regulations do not pursue the control of individuals but the control of public institutions. For this reason, it does not seem justified to request access to the aid received by a certain person, or those received by the people who live in a certain building, without a specific reason that justifies it. The Judgment of the Court of Justice of the European Union of November 9, 2010, which annuls certain articles of Regulation (EC) 1290/2005 on the financing of the common agricultural policy, in its modified version, is significant in this regard. by Regulation 1437/2007 and Regulation 259/2008 which imposed the publication of the data of the recipients of subsidies in such a way as to allow a search by name and surname of the beneficiaries.

The claimant argues in the letter presented to the GAIP on September 1, 2020 that the data protection regulations would be compatible with his request if the requested information was facilitated "by anonymizing the recipient persons physical, which vary (hospitality)".

In accordance with the provisions of article 4.1) of the RGPD and recital 26 of the RGPD, information can only be considered anonymous if it "does not relate to an identified or identifiable natural person".

For these purposes, it would be required that all information that could allow the identification of the person or persons affected be removed from the documentation to which access is sought, taking into account not only the information contained in the document but also the data that may be obtained by other means, assessing whether or not there is a real risk of re-identifying the affected persons without making disproportionate efforts.

Recital 26 of the RGD states that "[...] To determine whether a natural person is identifiable, it is necessary to take into account all the means that can reasonably be used by the person responsible for the treatment or any other person to directly or indirectly identify the person physically, such as singularization. In determining whether there is a reasonable likelihood that means will be used to identify a natural person, all objective factors, such as the costs and time required for identification, must be considered, taking into account both the technology available at the time of the treatment as technological advances. [...]".

The anonymization claimed by the claimant regarding the identifying data, however, makes it obvious that the request itself expresses the interest that this information belongs to all the people who have resided in a certain property. In the specific case, despite the indeterminate nature of the people to whom the request refers, as well as the lack of delimitation of a period of time, it must be taken into account that the information that is claimed can make identifiable to the beneficiaries or third parties.

This could be the case, if during the period there was only one occupant of the property, also in the event that the temporary period of the calls or other circumstances can be limited (for example, if the beneficiaries of said aid are a large family, or referring to disabilities or unemployment situations).

Given the above, it must be concluded that the anonymization of the identification data of the beneficiaries of public aid residing in a certain building in the sense intended by the claimant would not allow to exclude the application of the limits derived from the data protection regulations.

For all this, it is considered that access to the requested information would not be justified.

conclusion

In view of the personal data protection regulations and the circumstances presented, access to the requested information would not be justified.

Barcelona, 2 October 2020