

Ref.: IAI 29/2020

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 a University's refusal of a request submitted by a parent to have access to their child's academic qualifications.

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 the claim submitted in relation to the refusal by a University of a request submitted by a parent to have access to the academic qualifications of their adult child.

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 23, 2019, a letter is presented to a University (hereafter, the entity) in which a parent requests the academic qualifications for the 2018/2019 academic year of their adult child, as well as he is notified of the exams for which he would not have appeared.

The parent states in the application the financial dependency of the child, as can be seen from the divorce judgment, to which the satisfaction of alimony and contribution to academic expenses is arranged in his favor, among others. Expresses a legitimate interest in knowing said information with the aim of verifying the use of the training and being able to assess the filing of a demand for modification of measures.

2. On June 12, 2020, the entity communicates in writing the denial of the access request arguing that, in accordance with the institutional criterion of denying the request for access to personal data of students by of the parents if they have not authorized it, the child has communicated his refusal to grant him this information.

3. On July 13, 2020, the parent submits, through a legal representative, a letter of complaint to the Spanish Data Protection Agency (AEPD) in which he states that the entity has violated the right to access by not granting him the requested information, reiterating the legitimate interest in knowing the academic information with the aim of assessing the possibility of filing a request for modification of measures, and considering that the mere refusal expressed by his son, without alleging any other circumstance, is insufficient to make their rights prevail. Consequently, he requests that the entity be informed "that it has not correctly processed my son's academic data and therefore, after assessing them, he gives me my son's academic notes".

4. On July 22, 2020, the AEPD informs the parent that, by virtue of the documentation provided, the competent control authority to know the issues raised is the Catalan Data Protection Authority, to which send your writing.

5. On September 30, 2020, this Authority resolves the inadmissibility of the guardianship claim and its transfer to the Commission for the Guarantee of the Right of Access to Public Information, considering that the right to regulated access to data protection regulations, but the right of access to public information from Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), given that no it is intended to access information about your personal data but information relating to your child, without it being noted that you are acting as their legal or voluntary representative.

6. On October 8, 2020, the parent presents the claim form to the GAIP, in which he states that he meets the access requirements, since "my representative 1) has a legitimate interest, given that his son is financially dependent, he pays him alimony and contributes to 60% of university expenses 2) need for access, because it is the only way I have to know if my son is taking advantage of the university courses and 3) The "existing legitimate interest prevails over the rights and freedoms of my son, a student".

Accompany the claim with the written request for access to the entity, the denial of your request, the claim made before the AEPD, the contentious divorce judgments and appeals, as well as the legal report on which your request is based.

7. On October 21, 2020, the GAIP addresses a 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, in which it states that the person affected by the claim has also been informed, without allegations having been received at the date of issue of this report.

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 by means of an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of

the physical, physiological, genetic, psychological, economic, cultural or social identity 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 treatment of personal data and the free movement of such data and by which Directive 95/46/EC (General Data Protection Regulation, hereinafter 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 the treatments that are carried out on any information "on an identified or identifiable natural person ("the interested party »); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person".

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".

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful and, in this sense, the RGPD establishes the need to comply with one of the legal bases of article 6.1, among which section c) provides 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

they are applied 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 regulated 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 at hand, given the documentation to which the parent intends to access, regarding the academic information of the adult child, without stating his legal or voluntary representation, it can be concluded that this information must be considered as public for the purposes of article 2.b of the LTC and subject to the right of access (article 18 LTC) as it is documentation that is in the possession of the entity as a result of its teaching activity. It must be noted, however, that this right of access is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case with the limits of articles 23 and 24 of the LTC regarding personal data.

III

Access to information relating to the academic qualifications of the adult child must be analyzed from the point of view of article 24 of the LTC, ruling out that article 23 of the LTC, since the requested information does not seem to include information relating to ideology, trade union affiliation, religion, beliefs, racial origin, health, sex life or regarding the commission criminal or administrative violations.

Article 24 of the LTC provides for the following:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights.

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

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

d) The fact that it may affect the safety of people.

[...].”

Taking into consideration what is provided for in paragraph 2 of the aforementioned article, and with respect to the interests of the parent, it must be noted that the exercise of the right of access to public information is not conditioned on the fact that a personal interest is involved, as well as it does not remain subject to motivation or invocation of any rule, in accordance with what is provided for in article 18.2 of the LTC. However, knowing the motivation of the access request can be a relevant element to take into account. In this sense, articles 24.2 of the LTC and 15.3 of the LT provide that the weighting must take into account, among others, the purpose or justification expressed by the

From the documentation in the file, it can be deduced that the parent would like to access the academic qualifications of the 2018/2019 academic year of his child, who is of legal age, in order "to be able to assess the need to plan a claim judicial modification of the alimony payment". Under this pretext, he alleges, on the one hand, the need for access as it is the only way to know the degree of utilization of the studies and to assess whether there is sufficient basis to raise said demand and, on the other hand, his legitimization when the child has the status of economic dependency, is a beneficiary of the alimony and covers his academic expenses, according to the divorce judgment and subsequent appeal, provided with his application.

Law 25/2010, of July 29, of the second book of the Civil Code of Catalonia, relating to the person and the family (CCC), from articles 233-1 et seq., regulates alimony as one of the regulatory measures of divorce, according to each case, in the sense of establishing the distribution of the duty of maintenance in favor of the children or the fixing of maintenance for children who are over the age of emancipated without their own economic resources and live with someone of the parents. These measures, however, may be subsequently modified if the concurrent circumstances at the time of agreement or dictate have changed substantially (art. 233-7 CCC).

For these purposes, article 237-1 CCC provides that food, in addition to everything indispensable for the maintenance, housing, clothing and medical assistance of the fed person, will also be "expenses for training if this is minor and for the continuation of the training, once the majority has been reached, if he has not finished it earlier for a reason that is not attributable to him, as long as he maintains a regular performance. [...]". In similar terms, article 142 of the Civil Code is pronounced ("[...] Food also includes the education and training of the food operator while he is a minor and even after he has not completed his training for reasons that are not attributable to him [...]").

In relation to the obligation to provide food, the Supreme Court would have stated, through sentence no. 635/2016, of October 26, that "Child support does not expire by age, but the obligation extends until the children reach economic sufficiency, as long as the need has not been created because of the behavior of his own son".

The parent wishes to access the academic qualifications obtained by his child, of legal age, from the 2018/2019 academic year, in order to verify whether the circumstances through which the regulatory measures for divorce were established, in particular the suffrage of the training expenses, have

varied substantially due to a cause attributable to his son - the waste of training - and, where appropriate, assess the filing of a request for modification of measures. In this sense, it is necessary to consider that the parent limits his claim of access to the relevant data in order to be able to assess, and in his case contribute in order to prove, the degree of academic benefit of his child and, where appropriate, make assert their rights before the judicial authority. In other words, the possibility of verifying the performance of the child who is the beneficiary of maintenance constitutes a legitimate interest that can justify having the requested information.

It must be agreed that the claim for the modification of the regulatory measures of divorce, established by judgment and subsequent appeal that are recorded in the file, should be processed procedurally in accordance with the provisions of Law 1 /2000, of January 7, of Civil Procedure (LEC), which provides from articles 748 et seq., that said claim must be resolved according to the facts that have been the subject of debate and are proven .

Regarding the evidence, article 265 of the LEC provides that any demand, or response, must necessarily be accompanied by the documents on which the right to judicial protection is based, as well as the means and instruments of proof necessary if the claims of the formulated guardianship are based on them. In this sense, article 269.1 of the LEC provides that when "[...] with the demand, the answer or, where appropriate, at the pre-trial hearing, any of the documents, means, instruments, opinions and reports that, according to the precepts of this Law, must be provided at those times, or the place where the document is not designated, if it is not available, the party can no longer present the document subsequently, nor request that it be attached to the actions [...]" unless, broadly speaking, they are of a later date and could not have been prepared or obtained before these procedural moments (270.1.1 LEC), justify not having been aware of its existence before (270.1.2 LEC) or it has not been possible to obtain the documents, means or instruments before, for reasons not attributable to him (270.1.3 LEC).

Therefore, it can be affirmed that the denial of access to the requested information could hinder their right to effective guardianship, regulated in article 24.1 of the Spanish Constitution, to the extent that the parent cannot know whether the child maintains the regular academic performance on which article 237-1 CCC is based, on the one hand, or by not being able to have the evidentiary element required by the procedural regulations for the admission of a request for modification of measures, on the other hand.

Although, with respect to this last question, article 269.1 of the LEC also allows the parent to file a claim without attaching the means of proof, but designating its location so that it is admitted and integrated into the judicial file, in this context forces the applicant to have to initiate legal proceedings without having the necessary evidence on the performance of his child, means that his interests may be harmed to the extent that he should exercise an action, and possibly incur expenses, especially in terms of representation and legal assistance, without being able to adequately assess the basis of your claim.

Regarding the intrusion that the delivery of this information may entail for the child's right to data protection, the access sought by the parent involves the communication of their academic data. However, it must be borne in mind that despite his majority, the fact of being the beneficiary of a right to maintenance established by a court ruling but subject to the condition of

his academic performance, justifies that this information can be given to his parent obliged to pay, as long as this obligation lasts.

Given all of the above, although it appears in the file that the son would have expressed opposition to giving the parent access to his academic data, and taking into account the circumstances of the request, its purpose, and the 'restriction or minimization of the data to which the parent would like to access, it is considered that access to the child's academic qualifications, with regard to the 2018/2019 academic year, does not entail a serious prejudice to the rights of that child, especially for regarding the protection of their personal data, given the condition of economic dependence with respect to their parents, which can be graduated according to the personal circumstances of the adult child and, therefore, understanding that the right to guardianship prevails effective legal status of the parent with the purpose of being able to enforce his claim for modification of measures before the judicial authorities, if he deems it relevant.

conclusion

The data protection regulations would not prevent the parent's access to the academic data of their child, who is of legal age and financially dependent, referring to the 2018/2019 school year, for the purposes of certifying their performance, as the right to effective judicial protection.

Barcelona, November 2, 2020