

Ref.: IAI 35/2020

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 the contact details of a person who works in the Transparency Department of a City Council

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 the data of contact of a person who works in the Transparency Department of a City Council.

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

Background

1. On September 15, 2020, the City Council received a request for access to public information requesting:

"They send me the attached links in a paper reply dated June 29, 2020.

- 1) Please send me the direct telephone number of the department of transparency
City Hall of (...).
- 2) Corporate email of public official Mrs. (...)."

2. On October 14, 2020, the City Council approved the request with regard to point 1 and rejected it with regard to points 2 and 3.

Specifically, with regard to point 2, it was rejected because it was non-existent information.

Regarding point 3, it was dismissed on the grounds of the right to the protection of personal data.

3. On October 19, the applicant filed a complaint with the Commission for the Guarantee of the Right of Access to Public Information (GAIP).

4. On November 12, the GAIP requests a report from this Authority in accordance with article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance.

Legal Foundations

I

(...)

II

Regulation (EU) 2016/679 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the processing of personal data and the free movement of such data and by which Directive 95/46/CE (hereafter RGPD) is repealed, it states that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, it establishes a system for legitimizing the processing of data that is based on the need for one of the legal bases established in its article 6.1 to apply. Specifically, section c) provides that the treatment will be lawful if "it 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 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."

The LTC aims to regulate and guarantee the transparency of public activity and extends its subjective scope of application, among others, "to public law entities dependent on or linked to the administrations referred to in the letter a" (article 3.1.b), which includes the Administration of the Generalitat.

The entities that make up the local administration of Catalonia are part of the scope of application of the LTC.

Article 18 of the LTC recognizes the right of people to "access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal entity" (section 1).

Article 2.b) of the LTC defines "public information" as "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".

This right of access, 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 LTC), and the principles of the personal data protection regulations.

III

In his request, the person making the claim referred to two issues that were not appreciated by the City Council: on the one hand, the direct telephone number of the Department of Transparency

of the City Council; on the other hand, the e-mail address of a certain official of the City Council assigned to this area.

With regard to the first question, that is, the direct telephone number of the City Council's Transparency Department, it must be taken into account that the City Council denied access because it is non-existent data .

The first thing to say is that the data relating to the direct telephone number of a City Council area cannot normally be considered personal data. Although it cannot be ruled out that in some cases an area telephone number can be considered personal data (in those cases where, despite being an area telephone number, the person authorized to use that telephone is only a certain person) in principle the telephone assigned to a certain area is not personal data, so the right to the protection of personal data could not be invoked as a limit to the right of access to public information.

On the other hand, the City Council has indicated that this is non-existent data. In other words, it seems that it can be deduced that there is no direct telephone for the area. That being the case, it would not be information held by the City Council, therefore, in accordance with article 18 of the LTC, it cannot be subject to the right of access.

IV

With regard to the second of the requested information, that is, the e-mail address of a certain employee of the City Council, despite the fact that it is her professional e-mail address, it must be considered personal data, given that it is information that can be related to an identified natural person (art. 4.1 RGPD). That being the case, what is provided for in article 24 of the LTC will apply:

"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. (...)"

At the outset, the applicability of what is established in section 1 must be ruled out, given that in the case we are dealing with the data requested is not merely identifying data, but rather a data of contact

Paragraph 2 of this article will therefore apply, it being necessary to carry out a weighting between the public interest in its disclosure and the consequences that this may have on the right to data protection.

A first element to take into account is that the personal data protection regulations contain an authorization for the treatment (and this may also include the disclosure (art. 4.2 RGPD)) of the contact data of the people in the service of legal entities . Thus, article 19 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), establishes the following:

"1. Unless proven otherwise, the treatment of contact data and, where appropriate, those relating to the function or position performed by individuals who provide services in a legal entity provided that the following requirements are met:

a) That the treatment refers only to the data necessary for your professional location.

b) That the purpose of the treatment is solely to maintain relations of any kind with the legal entity in which the affected party provides its services.

2. The same presumption will operate for the treatment of data relating to individual entrepreneurs and liberal professionals, when they refer to them only in that condition and are not treated to establish a relationship with them as natural persons.

3. Those responsible or in charge of the treatment referred to in article 77.1 of this organic law may also treat the data mentioned in the two previous sections when it derives from a legal obligation or is necessary for the exercise of their powers."

Given that the City Council is part of the entities referred to in article 77 LOPDGDD, paragraph 3 of this article may allow the disclosure of the contact details of people in its service whenever it derives from a legal obligation or is necessary for the exercise of its powers.

In the case we are dealing with, however, there is no legal obligation to make this information public or to disclose it to people who request it.

On the other hand, it cannot be considered necessary to disclose this data for the exercise of the powers entrusted to the area where the official in question is attached or, at the very least, it is not necessary to disclose it so that citizens users of the service can contact the area or this person. In this regard, the City Council states that, apart from the possibility of submitting written documents, citizens already have a generic email address, that is to say not attributed personally to the employee in question, but as a

area address, to which you can address. In fact, the City Council states that the person making the claim has already used this address on some occasion.

Therefore, given the availability of this other address and the explanations provided by the City Council, it can be considered that the employee's personal address is not necessary for the public to be able to contact her, as required by the article 19 LOPDGDD.

Considering that the person making the claim is already aware of an email address provided by the City Council to make professional contact with the employee, it does not seem that the interest of the person making the claim in knowing the email address attributed personally to an employee must prevail over the employee's right to the protection of personal data, nor over the organizational reasons that have led the City Council to establish an address that is different from the personal address in order to be able to attend to the sole citizenship applications.

conclusion

In principle, the direct telephone number of a City Council Department is not personal data, unless it is directly linked to a single person. In any case, if there is no specific number attributed to the Department, it cannot be subject to the right of access.

The right of access to public information does not justify the disclosure of the e-mail address attributed personally to an employee for work reasons, taking into account that citizens already have another generic address established by the City Council for get in touch with them.

Barcelona, November 30, 2020