

Ref.: IAI 40/2020

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against a department for the partial denial of access to information on the use of the phytosanitary product 1.3 Dichloropropene and its mixtures with Chloropicrin in Catalonia.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue an opinion on a claim presented against a department for the partial denial of access to information public notice on the use of the phytosanitary product 1.3 Dichloropropene and its mixtures with Chloropicrin in Catalonia.

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 inform you of the following:

Background

1. On October 2, 2020, a citizen presents to a department a request for access to certain information related to the use of the phytosanitary product 1.3 Dichloropropene and its mixtures with Chloropicrin in Catalonia. Specifically, the information requested was the following:

"FIRST: Copy of the documentation presented to the DGSPA for the resolution to modify the exceptional authorizations of 1,3-dichloropropene, chloropicrin and its mixtures, broken down for the years 2019 and 2020

SECOND: Copy of the soil analysis bulletins specifying the pathogens and their concentration in individuals, colonies, etc. which justified the request to the DGSPA of MAPA on the part of this service for issuing exceptional authorization resolutions for 1,3-Dichloropropene substances, broken down by request and year.

THIRD: Copy of the soil analysis bulletins prior to the application of the substances that justify their need during the year 2019 already expired, in compliance with the first paragraph of point 1 of the mitigation measures within the Annex of each exceptional authorization in question, broken down by province, substance and Exceptional authorization (differentiating in the case of 1,3-Dichloropropene if it was applied for vines or for other crops).

FOURTH: Copy of the relevant documentation that justifies the need to apply said chemical substances because no other means of cultural, biological or physical control can be applied, in compliance with the provisions of the second paragraph of point 1 of the mitigation measures within of the Annex of each exceptional authorization

FIFTH: Copy of the relevant scientific documentation that justifies not being able to use the substances authorized in the phytosanitary register of the DGSPA, and related in the fifth point of my presentation.

SIXTH: List of notifications, based on what is required in the resolutions of the exceptional authorizations of 1,3-dichloropropene and the mixture of 1,3-dichloropropene and chloropicrin during the year 2019, of the application of the exceptionally authorized substances, broken down by municipality/polygon/plot/applied phytosanitary products.

SEVENTH: Statistics of the number of inspections, controls and sanctions issued during the year 2019 in compliance with the provisions of the second point of each Exceptional Authorization Resolution, for this Autonomous Community, broken down by province, and in the case of sanctions, broken down also for the unfulfilled administrative fault."

2. On October 29, 2020, the department responds to the request for access to the requested public information.
3. On November 11, 2020, the applicant filed a claim with the GAIP against the department for the partial denial of access to the requested information. According to the complaint, the department would only have provided him with the information referred to in the first point and, partially, the fourth point of his request, which is why he demands that the information contained in the second points be given to him, third, fifth, sixth, seventh and eighth point of his request.
4. On November 13, 2020, the GAIP requests the department to issue a report on the claim submitted, identify the third parties affected by the access and send the completed file to which it refers.
5. On December 4, 2020, the department issued a report stating that the information referred to in the second, third, sixth and seventh points of the access request were not provided as they contained personal data. Specifically, with respect to these points, it is made clear:

"(...)

Regarding the second point of the request: In accordance with article 13.2 section f) of Law 27/2006 no copy of the analysis bulletins indicated in the report was provided since it was considered that the information contained in the newsletters were confidential and contained personal data of natural persons (farmers). (...)

Regarding the third point of the request: The analysis bulletins indicated in the report were not provided, nor the report of a technician from a Plant Protection Group, since it was considered, as well as in the previous point, that the information contained in these was confidential as it contained data of natural persons. (...)

With regard to the sixth point of the request: the 2019 notifications were not provided, also because they had personal data. Regarding the cultivation of the vine, as indicated, it had only been requested by one county in 2019 and no notification was received.

- With regard to the seventh point of the request: in the report it was already indicated that 2 specific inspections were made to farmers in the municipalities (...), in which the corresponding acts were drawn up.

It was also reported that a sanctioning case was opened against a registered phytosanitary treatment company that treated outside the territorial scope for which the Ministry was asked for exceptional authorization(...).

In accordance with article 13.2 section f) of Law 27/2006, a copy of these documents was not sent as it was considered that they could have confidential data and contain personal data. (...)"

6. On December 9, 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 apply to the treatments that are carried out on personal data, that is, all information that alludes to a natural person in a way that identifies them, or makes them identifiable (articles 2.1 and 4.1) of the RGPD). 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 contact details".

Consequently, there must be no inconvenience from the perspective of data protection regulations in providing the applicant with information referring to legal entities that may appear in the requested documentation.

Article 4.2) of the RGPD considers as 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 the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, query, 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), in this sense, the RGPD establishes a system for legitimizing the processing of data that is based on the need for some of the legal bases established in its article 6.1. 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 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 right of access to public information is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, 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".

The requested information on the use of phytosanitary products formulated with 1, 3 Dichloropropene and its mixtures with Chloropicrin in the years 2019 and 2020 that the person making the claim requests from the department is "public information" for the purposes of article 2. b) of the LTC, and remains subject to the access regime provided for in these regulations.

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."

Access to information related to the environment has a specific access regime provided for in Law 27/2006, of July 18, which regulates the rights of access to information, public participation and of 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 regarding the following issues:

- a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, 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 decision-making regarding the measures and activities cited in letter c), and
- f) The state of health and safety of people, including, as the case may be, contamination of the food chain, human life conditions, assets 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)."

The Court of Justice of the European Union has ruled on the breadth of the concept of environmental information contained in Directives 2003/4/EC and 2003/35/EC, which have been transposed by the LAIA 17/1998 (Ley 17/1998, de 13 de mayo, de acceso a la información pública) in which the STJUE states that: "it must be remembered that in the concept of 'information on the environment of the letter a) of art. 2 of the Directive includes any information relating to the state of the different elements of the environment that are mentioned there, as well as the activities or measures that may affect or protect the state of said elements, 'including administrative measures and management programs of the environment". More specifically the Sentence of 16 Dec. 2010, C-266/2009 of the same court pronounces in the sense that: "the concept of "environmental information" in article 2 of Directive 2003/4 must be interpreted in the sense that it includes the information provided in the framework of a national procedure for the authorization or extension of the authorization of a phytosanitary product in order to determine the maximum content of a pesticide, its component or transformation products that can be found in food or drinks."

Therefore, it can be concluded that the request for information that is the subject of this report, related to the use of phytosanitary products formulated with 1, 3 Dichloropropene and its mixtures with Chloropicrin in the years 2019 and 2020, is environmental information and the provisions of the LAIA must apply to him and, additionally, where not provided for by the LAIA, the p

III

THE LAIA , in relation to access to environmental information, article 3.1 recognizes the following rights:

- "a) To access the environmental information held by the public authorities or that of other subjects on their behalf, without being obliged to declare a specific interest, regardless of their nationality, domicile or headquarters.**
- b) To be informed of the rights granted by this law and to be advised for their correct exercise.**
- c) To be assisted in your search for information.**
- d) To receive the information they request within the maximum periods established in article 10.**
- e) To receive the environmental information requested in the form or format chosen, in the terms provided for in article 11.**
- f) To know the reasons for which the information is not provided to them, in whole or in part, and also those for which said information is not provided to them in the form or format requested.**
- g) To know the list of rates and prices that, where applicable, are required to receive the requested information, as well as the circumstances in which payment can be required or waived."**

The right of access to environmental information is not configured as an absolute right of the applicant, but, as established in article 13 of the LAIA, is subject to a regime of exceptions that the public authority can invoke to deny the request. Specifically, with regard to personal data, section 2.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 y 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, the LAIA itself expressly requires that the reasons for denying access to environmental information be interpreted restrictively and that, in each specific case, a weighting be carried out between the public interest that would serve with the disclosure of the information and the interest that would be served by denying access to that information. (Article 13.4

In addition, it is foreseen that the authorities cannot rely on the grounds provided for in letters a), d), f), g) and h) of article 13.2, (letter f), as explained, is the one related to the protection of personal data) to deny a request for information related to emissions in the environment.

In the case at hand, according to the documentation accompanying the request, the department would have denied access to part of the requested information claiming that it contained personal data. Specifically, the information denied is that requested in points two, three, part of the fourth, fifth, sixth, and seventh of the access request, which had as its object:

"SECOND: Copy of the soil analysis bulletins specifying the pathogens and their concentration in individuals, colonies, etc. which justified the request to the DGSPA of the MAPA on the part of this service for issuing exceptional authorization resolutions for the substances 1,3-Dichloropropene, broken down by request and year).

THIRD: Copy of the soil analysis bulletins prior to the application of the substances that justify their need during the year 2019 already expired, in compliance with the first paragraph of point 1 of the mitigation measures within the Annex of each exceptional authorization in question , broken down by province, substance and Exceptional authorization (differentiating in the case of 1,3-Dichloropropene if it was applied for vines or for other crops).

FOURTH: Copy of the relevant documentation that justifies the need to apply said chemical substances because no other means of cultural, biological or physical control can be applied, in compliance with the provisions of the second paragraph of point 1 of the mitigation measures within of the Annex of each exceptional authorization

FIFTH: Copy of the relevant scientific documentation that justifies not being able to use the substances authorized in the phytosanitary register of the DGSPA, and related in the fifth point of my presentation.

SIXTH: List of notifications, based on what is required in the resolutions of the exceptional authorizations of 1,3-dichloropropene and the mixture of 1,3-dichloropropene and chloropicrin during the year 2019, of the application of the exceptionally authorized substances, broken down by municipality/polygon/plot/applied phytosanitary products.

SEVENTH: Statistics of the number of inspections, controls and sanctions issued during the year 2019 in compliance with the provisions of the second point of each Exceptional Authorization Resolution, for this Autonomous Community, broken down by province, and in the case of sanctions, broken down also for the unfulfilled administrative fault."

IV

It can be expected that the requested documentation will contain personal data of public employees and technicians who may have intervened in its preparation or processing, and of the owners of the agricultural holdings where the analyzes have been carried out or who have notified the application of the aforementioned phytosanitary products.

In accordance with article 13.4 of the LAIA, the reasons for refusal provided must be interpreted restrictively and, to this end, a weighting must be carried out in each specific case between the public interest that would be served with the disclosure of the information, with the interest that would be served by its denial.

When weighing and respecting the data of public employees that may appear in the requested information, it must be taken into account that the identification of these is carried out in the

framework of their association and the services they provide in the public administration, in such a way that access to their data is directly related to their public functions. Therefore, apart from exceptional cases in which it is necessary to preserve the privacy of these due to the personal situation that any of these workers has revealed, in principle there should be no impediment to facilitate access to information that contains data merely identifiers (name and surname) of employees or public officials.

In the event that soil analysis bulletins or product application notifications are signed by a registered technician, the identification data of the same does not seem to require specific protection or confidentiality, especially if it is taken into account consideration that, with regard to their identification data (name and surname and membership number) and profession, this is information that the corresponding professional associations must already make public.

The owners of the agricultural holdings that can appear both in the soil analysis bulletins and in the notifications of the application of the mentioned substances, will be those who have applied for the accession to the exceptional authorization for the application of the products mentioned and, therefore, it can be expected that they will have the corresponding authorization from the department.

At the outset, it should be remembered that article 7 of the LAIA, when it regulates the minimum content of environmental information that must be disseminated, expressly provides that it must include "Authorizations with a significant effect on the environment environment and environmental agreements. Otherwise, the reference to the place where the information can be requested or found in accordance with the provisions of article 5. At the time of issuing this report, insufficient information is available to determine whether the authorizations referred to in the request for information can be considered to have a significant effect on the environment. If so, and to the extent that it would be information subject to publicity, it does not seem that there would be any inconvenience in providing the requested information.

However, as this circumstance is not stated, in the case at hand, in the weighting of interests provided for in article 13.4 of the LAIA, it must be taken into account that with the denial of access the interest in the protection of the personal data of the owners of the agricultural activities included in the information would be met requested, while its disclosure would serve the public interest in providing transparency to environmental information. However, in this case, given the purpose of the environmental regulations and the same purpose declared by the applicant in his claim, it can be concluded that the public interest that would be satisfied with access to the requested environmental information it would also be achieved without sacrificing the privacy of the people affected. The claimant himself states in his letter that the purpose of the access is to verify that the administration is carrying out the analyzes provided for in the regulations and is correctly documenting the need for the application of these products, and makes express reference to the possibility that this information is offered "hiding" the personal data that may be included.

Therefore, to the extent that there is the possibility of finding a balance between the two public interests at stake, it would be necessary to attend to the request for access made and provide the information by removing from it the data that allows the identification of the owners of the agricultural activities .

Finally, it should be borne in mind that the seventh point no longer refers to authorizations, or tests linked to the granting of authorizations, but to inspections, controls and sanctions, which should initially be considered information with a more sensitive. However, it is necessary to take into account

that the information requested in this case is only statistical information. Specifically, what is requested is: "Statistics of the number of inspections, controls and sanctions issued during the year 2019 in compliance with the provisions in the second point of each Exceptional Authorization Resolution, for this Autonomous Community, broken down by province, and in the case of sanctions, broken down also by unfulfilled administrative fault." . Therefore, and to the extent that it does not allow identifying specific natural persons without disproportionate efforts, it does not contain personal data.

Consequently, from the point of view of data protection regulations, there should be no impediment in providing the requested information regarding inspections, controls and sanctions as long as this is limited to the number of inspections, controls and sanctions with indication, if applicable, as specified in the request, of the province and the imputed administrative offense and does not allow the identification of the affected persons.

Conclusions

The data protection regulations do not prevent the claimant's access to the identification data of public employees, public positions or registered technicians that may appear in the claimed documentation, nor to the information on the number of inspections, controls and sanctions imposed by the claimed administration, with indication, if applicable, of the province and the imputed administrative infraction.

With regard to the rest of the information, the data that allows the identification of the natural persons holding the authorizations should be omitted from this information, unless it is authorizations with a significant effect on the environment.

Barcelona, January 7, 2021