

IAI 12/2021

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 presented by an individual against a public body for the lack of response to the request for access to a written complaint of workplace harassment made by a worker against, among others, the person making the claim.

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 by a citizen against a public body for the lack of response to the request for access to a written complaint of workplace harassment made by a worker against, among others, the person making the claim.

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, the following is reported:

#### Background

1. On October 30, 2019, a worker from (...) presented, before the Management of (...), a letter of complaint or denunciation of workplace harassment against several people, including the person claiming
2. On May 5, 2020, the Department of Digital Policies and Public Administrations issues a resolution by which it does not accept the document submitted by the person making the complaint to understand that it is outside the scope of application of the protocol, since the worker had voluntarily left the workplace and had no connection with the Administration of the Generalitat de Catalunya,
3. On December 10, 2020, the claimant requested the Human Resources Department of (...):

"1) That it be clarified for me without a doubt on the part of that Directorate of Human Resources if by my name or by the position I hold in (...) as head of the section of the hemostasis and thrombosis laboratory, I appear mentioned in said letter of complaint or report

2) In the event of an affirmative answer to the previous point, that a complete copy of the brief be sent to me as soon as possible, to guarantee my right to defense in the event that I am forced to exercise it by any means and not cause my defenselessness".

5. On January 11, 2021, in the face of the lack of response from the Human Resources Directorate of (...), the claimant filed a claim with the GAIP, in which he reiterates in the request and adds that he knows d 'other people who have had access to the writing" without telling them

has hidden in it any personal data of any of the people who appear in it"; that he requests it in order to exercise, if applicable, his right of defence; and lastly, he states that if "by that commission it is understood that it is relevant, despite guaranteeing my access to the document but concealing data from third parties and maintaining mine, please proceed in this way so that my right to defense is properly insured".

6. On January 18, 2021, the GAIP informs the public body of the claim submitted, and requests the issuance of a report with a copy of the complete file relating to the right of access and the identification of the affected third parties.

7. On February 8, 2021, the Managing Director of the public entity issues the report at the request of the GAIP, in which he states, among other issues and with regard to personal data:

- That the Human Resources Directorate of (...) contacted the claimant "by email on December 22, 2020 to have a telephone conversation in relation to his letter of request, although the claimant he did not answer until January 8, 2021".
- That the person making the claim, when submitting the claim to the GAIP, "had already obtained part of the information regarding the existence of the letter and in relation to its processing at the DGFP" (Directorate General of the Civil Service) .
- That the letter object of complaint "was sent from (...) to the DGFP in accordance with the protocol for the prevention, detection, action and resolution of situations of psychological harassment at work and dismissals discrimination at work."
- That according to the Protocol "the information it contains has the same treatment as the reserved information".
- That the unit of the DGFP "issued a resolution of inadmissibility of the request for intervention, to understand that the complainant suddenly found herself outside the scope of application of the protocol by resigning with effects of on November 8, 2109 (date subsequent to the presentation of the complaint and its processing by this Institute) to his status as statutory staff of (...)".
- That considers that the requested information must be delivered "without any mention of data personal information of the persons identified or identifiable in the complaint".

8. On February 9, 2021, the GAIP makes an additional request to the information provided.

9. On February 15, 2021, the public entity responds to the request made by the GAIP. And it states, among others, that "it has not proceeded to communicate to the person claiming, any offer to consult the claimed document" that "this Institute has in its possession the original of the complaint document (.. )".

10. On February 19, 2021, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

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.

Therefore, any other limit or aspect that does not affect the personal data contained in the requested information is outside the scope of this report, as would be the case of the limit established in article 21.1.b) of the LTC, relating to the investigation or sanction of criminal, administrative or disciplinary infractions, the application of which could lead to the claimant's right of access being denied or restricted for the purposes of protecting the investigation .

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 claim is filed against the lack of response to the request for access (and copy) of a letter of complaint of workplace harassment presented by a worker against, among others, the person making the claim and who ended the file for non-admission of the application.

Article 18 of Law 19/2014 of December 29, on transparency, access to public information and good governance (LTC), establishes that "people have the right to access public information, to which it refers article 2.b, in an individual capacity or in the name and representation of any legally incorporated 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 power as a result of its activity or the exercise of the

its functions, including those supplied by the other obliged subjects in accordance with the provisions of this law".

State Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

In this case, the information requested by the claimant is "public information" for the purposes of article 2.b) of the LTC, subject to the access regime provided for in this regulation, which establishes, as a criterion general, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 e

For the information available when issuing this report, the letter requested by the person making the claim contains personal information referring to him or her, as well as personal information of third parties, specifically, of the person who made the complaint against the person claiming, as well as other people against whom the complaint was made that would appear identified in the document in question. This, apart from, where appropriate, data of people who have participated in the preparation of the requested documentation.

### III

The complaint is lodged against the lack of response to the request for access (and copy) to the information of a letter of complaint submitted by a worker against several people, including the claimant, for an alleged case of harassment labor

In this sense, this report will focus solely on access to the complaint letter to which access has not been granted and on the possible limitations that may arise with regard to the right to the protection of personal data.

With regard to the information contained in the letter referring to the person making the claim, it should be borne in mind that the personal data protection regulations recognize the right of access to one's own personal information (art. 15 RGPD), it is that is to say, the right of the affected or interested person (natural person who owns the data that is the subject of the treatment) to request and obtain from the person in charge of the treatment a copy of their personal data subjected to treatment, including the information on the origin of the data when these have not been obtained from the same interested person (art. 15.1.g) RG

This article recognizes the claimant's right to know not only the direct information about his person that is being treated by the person responsible for the treatment, and that is included in the written request, but also the right to know the origin of the information, which entails knowing the identity of the people who provide the data controller with information about the claimant.

However, this right is not absolute and may be limited, for example by the limitations arising from the preservation of confidentiality to carry out research. Thus, for example, article 21.1 of the LTC provides that: "The right of access to public information may be denied or restricted if the knowledge or disclosure of the information entails harm to: (... ) b) The

investigation or the sanctioning of criminal, administrative or disciplinary offences". Article 14.1 e) of the LT is expressed in the same sense.

Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPACAP) expressly provides for the possibility that the competent body, before agreeing to the start of an administrative procedure, can open a period of prior information with the purpose of knowing the circumstances of the specific case and the convenience or not of starting the procedure (article 55).

Bearing in mind that the purpose of these preliminary actions is to determine on a preliminary basis whether or not the circumstances exist that can justify the imputation of facts constituting an infringement through the initiation of the corresponding disciplinary procedure, the right of The claimant's access to his data could be limited during the investigation and whenever it is considered that they could be sanctioned administratively or even criminally. This limitation would affect any person affected by the actions, regardless of the position they hold.

However, in the case we are dealing with, due to the information available when issuing this report, the letter of complaint submitted by the person making the complaint was not accepted for processing, on the understanding that the worker was outside the scope of application of the Protocol for the prevention, detection, action and resolution of situations of psychological harassment at work and other discrimination at work, given that he had voluntarily left the workplace and no longer had any ties with the Administration of the Generalitat of Catalonia. Thus, the harassment file that could contain the requested letter and which is the cause of the claim, would already be closed.

In this sense, from this moment on the reserved and confidential nature of the proceedings ceases, and therefore, it cannot be a reason to deny the claimant access to his own personal information that may be contained in the document that request Thus, the invocation of confidentiality in terms of article 21.1 b) LTC and 14.1.e) LT, cannot operate in this case as a limit for the right of access of any natural person to his own personal information (eg art. 15 RGPD).

In accordance with the above, and taking into account that the data protection regulations expressly provide for the right to access one's own data (article 15 LOPD), there would be no problems, from the point of view of data protection , by giving the claimant (the reported worker) access to the information that refers to his person and that is contained in the requested document. Specifically, the person making the claim should be able to access the information relating to the facts, conduct or attitudes attributed to him in the written complaint.

The data owner's right of access also includes the right to know the origin of the data being processed, and therefore the identity of the reporting person. In this case, moreover, according to the file, the identity of the person who filed the complaint against the claimant would already be known to him.

In addition, the person who submits a complaint of this type against another worker should anticipate that the person complained of may know the facts or situations that are part of the story in

that the accusations made against him are upheld, to the effect that he can rebut and defend himself.

The impact on the privacy of the reporting person could be appreciable with regard to information that this person had made about himself, but not with regard to the information provided on facts or conduct attributed to the claimant, the file has been instructed disciplinary or not, and in this sense, the right to data protection of the reporting person should not imply a limitation to the right of access of the reporting person to the information contained therein referring to the reporting person or the identification with first and last name of the person making the complaint.

It should be noted that article 24 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) contemplates the possibility of preserving the identity of the complainant (limiting the right access to the origin of the data itself) in the event that the Administration creates information systems for internal complaints, as a mechanism to protect whistleblowers. This provision is not applicable to the case at hand because, from the information available, there is no evidence that the data controller has implemented one of these systems.

Accordingly, there would be no problems, from the point of view of data protection, in giving the person claiming access to the information that refers to his person and that is contained in the complaint letter alone, including the identity of the reporting person.

#### IV

In any case, however, it cannot be ruled out that the requested document contains other information that does not fit in the information referred to in article 15 RGPD and that would therefore prevent resolving the claim based only on the data protection regulations (art. 24.3 LTC).

Therefore, once these considerations have been made, relating to access to information about the person making the claim, which will obviously condition the analysis that will be carried out below, it is necessary to analyze the provisions of the transparency regulations, and which will be applicable not only to access to the data of the person making the claim but also to other personal data that may appear in the requested information.

Thus, it will be necessary to take into account the transparency regulations, specifically, the provisions of articles 23 and 24 of the LTC.

According to article 23 of the LTC "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, unless the person concerned expressly consents to it by means of a written document that must accompany the request."

For its part, article 15.1 of the LT establishes that "(...) If the information includes specially protected data referred to in section 3 of article 7 of Organic Law 15/1999, of December 13 , or data relating to the commission of criminal or administrative offenses that did not entail a public reprimand to the offender, access may only be authorized in the event that the express consent of the affected person is counted or if the latter is covered by a rule with a range of Law."

Access to this type of personal information, deserving of special protection, must be denied, unless the request for access is accompanied by a written statement in which the affected person gives their express consent to respect, or that the access was protected by a rule with the rank of Law, assumptions that according to the available information do not apply in this case.

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Regarding access to other personal information, article 24 of the LTC will have to be taken into account.

"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 this point, and for purposes of weighting, it is appropriate to distinguish the information referred to the claimant himself, from other personal information that may appear in the requested document, referring not to the claimant himself but to third parties.

With regard to the information of the person making the claim, the weighting that must be done in accordance with Article 24.2 LTC must necessarily be decided in favor of the person making the claim both for the reasons already set out above. This would also include the identification with names and surnames of the reporting person, origin of the information collected about the reporting person.

This weighting could be affected in the event that we were faced with an internal system of complaints and the reporting person had requested anonymity (art. 24 LOPDGDD), the reporting person had exercised his right of opposition (art. 21 RGPD ) or had exposed a situation in the claims procedure granted by the claimed entity or by the GAIP that had to

make the maintenance of anonymity prevail. But neither one nor the other circumstances seem to apply in the case at hand.

With regard to the information of third parties, specifically the other persons denounced in the same letter of complaint, the purpose for which access is requested must be taken into account. As you know, it is not mandatory to allege a certain purpose when requesting information (art. 18.2 LTC), but if the purpose is alleged, this may be a relevant element when weighing which is required by Article 24 LTC.

In the access request of December 10, 2020, the claimant requested access "to guarantee my right to defense in case I am forced to exercise it by any means and not to cause my defense". Later, in the claim before the GAIP, the claimant adds "that my petition before this commission is motivated not only by the right to my defense in the context of a hypothetical (and improbable, because it lacks any foundation) disciplinary procedure, but above all, so what I intend to do is provide myself with legal arguments and means of proof to consider the existence of possible insults and slander against me and evaluate the possibility of acting accordingly, as well as being able to add the complaint of (...) to the evidence that reuno como documentary basis of mobbing", from which it can easily be deduced that the motivation of the request is related to the possibility of taking certain actions in defense of their rights and interests, in their condition as a reported person.

Thus, it seems that what is in the interest of the person making the claim is to obtain information about what has been said about him in the letter of complaint when he feels harmed by the person making the complaint. The fact that this complaint has been filed and therefore the file has been closed, does not mean that the person making the claim can subsequently exercise the legal actions they deem appropriate to defend themselves against said accusations. Beyond that, the claimant makes it clear that he does not want to access other personal information of third parties.

The principle of data minimization (art. 5.1.c) RGPD) requires that any data processing that is carried out, such as the communication or access to personal data, is limited to the minimum data necessary to achieve the intended purpose with the treatment.

This leads to the conclusion, for the purposes of the weighting of Article 24.2 LTC that it is necessary to prevail in this case the right to data protection of these third parties and to limit the claimant's access to these personal data of third parties that contained in the requested documentation, given that the claimant himself states that he has no interest in knowing the identity of these third parties.

Given the terms of the claim, given that it is not necessary or justified for the claimant to access information or data referring to third parties that may appear in the written complaint, such as data referring to their own personal circumstances, work or professionals, etc., of these persons, this information must be removed from the document to which the claimant must be able to access these third persons (identification).

In any case, it should be noted that given the context in which the complaint is made (workplace) and the facts attributed to these people in the complaint (facts related to workplace harassment by these people), it is foreseeable that despite eliminating the



identification these remain fully identifiable by the person making the claim. For this reason, it would be necessary to delete not only their identifying data, but any other information that could allow them to be identified.

For all the above, it must be concluded that with respect to information that is not part of special categories of data, the claimant must be able to access the information he requests, that is, a copy of the complaint letter that relates with his conduct as a reported person, including the identification with the name and surname of the reporting person, and excluding from access, information on other data of the reporting person or that allows to also identify other reported third parties.

#### **conclusion**

The person making the claim has the right to access all the information about him/her that appears in the written complaint requested, including the origin of the information and, therefore, the identity of the people who have provided information about the claimant (art. 15 RGPD).

The person making the claim must be able to access the information they request, that is, a copy of the written complaint that relates to their conduct as a person being reported, including the identification with the name and surname of the person making the complaint, and excluding from access, the information on other data of the reporting person or that allows to identify also other reported third parties.

Barcelona, March 12, 2021