

IAI 13/2021

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in the complaint file of a citizen against the City Council of (...) in relation to a request for access to information from the municipal register of inhabitants, specifically, about the people registered in the register property of which he is a co-owner.

The Commission for Guaranteeing the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted by a citizen in relation to the access request to information contained in the municipal register of inhabitants, specifically, about the people registered in the property of which he is a co-owner.

After analyzing 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 Counsel, the following report is issued:

Background

1. On July 18, 2020, the claimant submits a letter to the City Council, in which he requests information regarding the registration, at the address of which he is a 50% co-owner, together with his ex couple. In particular, he requests that he be issued "a certificate of cohabitation with a list of people registered in the aforementioned property of my property."
2. On July 20, 2020, the City Council informs the claimant's lawyer that, after consulting the data of the Municipal Register of inhabitants of the property in question, "2 people are registered." The City Council adds that it cannot be provided with the personal data contained in the register of these people, despite being co-owner of the property, in accordance with data protection regulations.
3. The file contains a copy of the Resolution of the Free Legal Assistance Commission, of the Department of Justice (CAJG), dated October 23, 2020, which reports unfavorably the request for free legal assistance of claimant, given that "the applicant's assets, excluding the real estate that constitutes his habitual residence, exceed the limits established in article 4 of Law 1/1996."
4. On December 15, 2020, the applicant filed a complaint with the GAIP against the denial of access to the aforementioned information. In summary, the claimant states that he is co-owner of 50% of the flat in which his ex-partner lives and owns the other 50%, with her partner, for 8 years. The claimant adds that he is requesting the information because the CAJG would have denied him recognition of the right to free legal assistance and to be able to challenge said denial.
5. On December 28, 2020, the GAIP demands from the City Council the issuance of a report in relation to the claim presented, the transmission of a copy of the file, as well as the

identification of the third parties affected by the access claimed, if any.

6. It is contained in the report file of the City Council, sent to the GAIP on January 19, 2021, together with the file and the identification of the two people affected.

7. On February 3, 2021, the GAIP informs the claimant that obtaining a cohabitation certificate is not admissible under Law 19/2014, since the procedure for accessing the information of the its article 18, only protects the obtaining of information, but not the issuance of certificates, and urges him to confirm that he maintains his interest in continuing the procedure. In response to this letter, the claimant confirms to the GAIP that he is interested in continuing the procedure to have access to the data of the people registered at the domicile of which he is a co-owner.

8. The file contains a copy of the judgment (...), related to the claimant, as well as a copy of the resolution of the Department of Welfare and Family, accrediting and recognizing the claimant's degree of impairment.

9. The file contains the communication from the GAIP to the two people identified by the City Council as affected, of the presentation of the claim. The file also contains the allegations presented by both affected persons, on February 17 and February 22, 2021, respectively, in which they state that they do not authorize the information requested to be communicated to the claimant.

10. On February 24, 2021, the GAIP requests this Authority to issue a report 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, 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

According to the claim submitted to the GAIP, the claimant would have requested from the City Council information about "the people registered in the property of my 50% ownership (...), whenever I do not reside there ." The claimant adds that his ex-partner and co-owner lives in the indicated flat, with his current partner for 8 years, and explains that the request for information is due to the fact that the Free Legal Aid Commission would have denied him the right to have this assistance, "for owning a property of my own and residing in another for rent, the reason being that my ex-partner lives there with his new partner, who was convicted of the crime of injuries against me in 2016 (final criminal court sentence). That's why I'm forced to live on rent in another home. And to prove it I need the information on the register (...)."

The claimant states his interest in contesting the decision of the CAJG, in order to have free legal assistance. Therefore, this challenge to the decision of the CAJG would be the reason why the claimant requests to know or confirm which people are registered at the home of the co-owner.

At the outset it should be noted that, although the fact that the information is requested in a certificate or in another format, that may be relevant from the point of view of the obligations arising from the right of access recognized in transparency legislation, it is irrelevant in any case, for the purpose of the assessment that must be made in this report, that the information is provided in a certificate or in another type of document, since the implications for the right to data protection would be the same.

In this context, it should be borne in mind that the communication of personal data contained in the Municipal Register of Inhabitants constitutes processing of personal data, subject to

to the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereafter, RGPD).

Article 6 of the RGPD regulates the cases in which the processing of personal data is lawful, and establishes:

"1. The treatment is only lawful if at least one of the following conditions is met:

a) The interested party has given consent for the processing of their personal data, for one or several specific purposes. b) The treatment is necessary to execute a contract in which the interested party is a party or to apply pre-contractual measures at their request. c) The treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment. d) The treatment is necessary to protect the vital interests of the person concerned or of another natural person. e) The treatment is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment. f) The treatment is necessary to satisfy legitimate interests pursued by the person in charge of the treatment or by a third party, as long as the interests or fundamental rights and freedoms of the interested party that require the protection of personal data do not prevail, especially if the interested is a child.

What is provided in letter f) of the first paragraph does not apply to the treatment carried out by public authorities in the exercise of their functions."

In accordance, then, with the regulations in force in the field of data protection, the processing of personal data by the City Council in relation to the communication of data of registered persons to a third party, in this case, the claimant, would require the consent of those affected, or that any other of the legal bases of article 6.1 RGPD would apply.

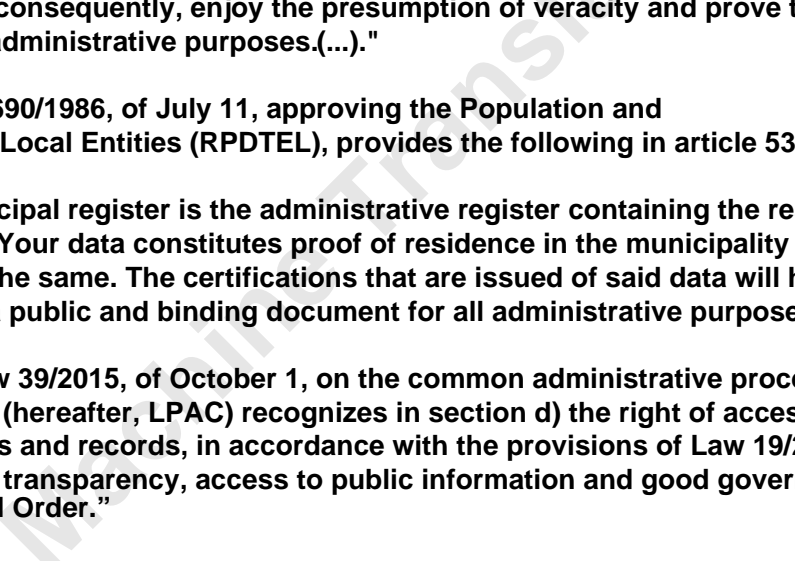
As can be seen from the file (letters of allegations presented to the GAIP by the two affected persons, on February 17 and February 22, 2021, respectively), the two affected persons do not authorize the communication to claimant of the requested information. Therefore, in the absence of the consent of those affected, it is necessary to analyze whether there is another legal basis for the communication.

III

Before entering into the analysis of the incidence of the right to data protection in the exercise of the right of access to public information, given that the claimant requests information on the persons registered in the property of which is co-owner together with his ex-partner, it is appropriate to refer to the regulatory legal regulations of the Municipal Register of I

The Register is an administrative register regulated by Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL).

According to article 16.1 LRBRL, "1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"

In the same sense, according to article 40.1 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC): "The municipal register is the administrative register containing the residents of a municipality. The data contained in the register constitute proof of residence in the municipality and use. The certifications issued by the town councils on this data have the character of a public document and, consequently, enjoy the presumption of veracity and prove the data recorded in them, for all administrative purposes.(...)." 

Royal Decree 1690/1986, of July 11, approving the Population and Demarcation of Local Entities (RPDTEL), provides the following in article 53:

"1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes."

Article 13 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC) recognizes in section d) the right of access "to public information, files and records, in accordance with the provisions of Law 19/2013, of December 9, on transparency, access to public information and good government and the rest of the Legal Order."

In Catalonia, you must take into account Law 19/2014, of 29 December, on transparency, access to public information and good governance (hereafter, LTC).

The first additional provision of the LTC provides as follows:

"2. Access to public information in subjects that have established a special access regime is regulated by their specific regulations and, additionally, by this law."

In the same vein, the first additional provision of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced.

Therefore, given the aforementioned provisions of the LPAC and the LTC, it is necessary to preferentially apply the specific regulatory regulations governing the Register, which establishes a special access regime, for the purposes of determining the legal authorization for the communication of the personal data that may be contained therein.

Regarding the data included in the Register, article 16.2 LRBRL provides that:

"2. The registration in the Municipal Register will contain as mandatory only the following data: a) Name and surname. b) Sex. c) Usual address. d) Nationality. e) Place and date of birth. f) Number of national identity document or, in the case of foreigners: (...)."

In the same sense, article 41 TRLMRLC.

According to article 40 of the TRLMRLC:

"(...).

40.2 The data contained in the municipal register are confidential. Access to this data is governed by the rules governing citizens' administrative access to archives and public records and by Law 5/2002, of April 19, of the Catalan Data Protection Agency.

40.3 Without prejudice to the provisions of section 2 and without requiring the consent of the person concerned, the data of the register may be communicated to other public administrations that request it, when they are necessary to exercise the respective powers, and exclusively for the matters in which it is relevant to know the residence or address."

From these precepts it follows that the data of the Register are confidential, as recorded in the jurisprudence, among others, the sentence of the National Court of February 2, 2001: "Los datos del Padrón son confidenciales, pues contienen datos propios of the scope of privacy of those registered, as can be inferred from the simple reading of article 16.2 of the Basic Law of Local Government, where the data that must be included in the Register are set out; and which are subject to Law 5/1992, with the only exception contained in article 11.3 of the Basic Law of Local Government, previously transcribed."

Current regulations provide that registered persons may request registration certificates or flyers (arts. 53.1 and 61 RPDTL, respectively, and art. 8.1.1 of the Resolution of April 29, 2020, of the Undersecretariat, by the that the Resolution of February 17, 2020, of the Presidency of the National Institute of Statistics and of the General Directorate of Autonomous and Local Cooperation, is published, by which technical instructions are given to the Town Councils on the management of the municipal Register), no only in relation to your own personal data (art. 15 RGPD), but also, in certain cases, in relation to data of third-party natural persons who are registered in the same property.

As this Authority has agreed (Opinions CNS 43/2017, CNS 45/2017), the fact that it is one of the persons registered in a home who requests registry information about the

other registered persons, could provide sufficient legal authorization for the communication of certain data from the register. Thus, a person registered in an address can obtain from the City Council (administrative competent in the management of the Register), a document in which all the registered persons are listed for the purposes of accrediting the residence and habitual address, purpose that would fall within the provisions of article 16 LRBRL and 40 TRLMRLC. On this legal basis, the data protection regulations (art. 6.1.f) RGPD) would lead to consider the communication lawful, when it is necessary to satisfy the legitimate interest of the data controller or a third party, as long as the rights and interests of the affected persons do not have to prevail (on this, we refer to the provision of article 8.1.1 of the Resolution of February 17, 2020, cited). Thus, the inclusion in the registration certificates or leaflets of the identification data relating to the names and surnames of all the people registered in the same address for the purposes of certifying cohabitation, at the request of one of these people, it would not be contrary to the regulations for the protection of personal data.

However, given that, according to the information available, the claimant is not registered at the address in question, this possibility of accessing the information of the other people registered at the same address is not applicable. Given the information contained in the file, it is relevant to note that the claimant is co-owner of the address in relation to which he is requesting information, but would not be registered there.

Therefore, given that the specific regime of access to the data of the Register (LRBRL and TRLMRLC) does not provide, in general, for private individuals to access other people's register data, it will be necessary to examine whether the regulations governing the citizens' access to public information, to which article 40.2 TRLMRLC refers, could enable communication to the claimant of the requested information.

IV

The requested information must be considered public for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC), as it is documentation in their possession as a result of their skills. However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data.

Considering that the data contained in the Register (16.2 LRBRL and 41 TRLMRLC), would not be particularly protected data (art. 9 RGPD and art. 23 LTC), for the purposes of the aforementioned weighting, it is necessary to attend to the criteria of the article 24.2 of the LTC, according to which:

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

With regard to weighting, it must be taken into account, on the one hand, whether the communication can be relevant, in some sense, to the fulfillment of "purposes of public interest for the benefit of all citizens" that have to prosecute public administrations, institutions and public bodies with their functions, activities and services, for the benefit of all citizens, as set out in the Preamble of the LTC. Without prejudice to this, it is also necessary to examine, for the purposes of weighting, whether there is a particular interest or legitimate purpose on the part of the claimant, which could justify access to the information requested.

At this point, we note that article 22.1 LTC, establishes that:

"1. The limits applied to the right of access to public information must be proportional to the object and purpose of protection. The application of these limits must take into account the circumstances of each specific case, especially the concurrence of a higher public or private interest that justifies access to the information."

Given the information available, it is not clear what public interest for the benefit of all citizens could be benefited or fulfilled by access, in the case at hand (art. 24.2 LTC).

Therefore, it is necessary to examine whether there is a personal or particular interest that could be decisive for weighting purposes, and that could justify the communication of the requested information.

According to article 18.2 of the LTC, the exercise of the right of access to public information "(...) is not conditioned on the concurrence of a personal interest, is not subject to motivation and does not does not require the invocation of any rule." The right of access to public information can legitimately respond to particular interests (the Preamble of the LTC mentions the principle of "absence of interest and motivation in the demand for access").

The private or particular dimension of the right of access to public information is specified by allowing people to access information that may be of interest to their sphere of particular interests and in this sense, the purpose of access plays an essential role when weighing between the two rights at stake. In fact, the particular interest that can be pursued by the claimant with the access, is already provided as a weighting criterion in article 15.3.b) of the LT, by expressly establishing that it is necessary to take into consideration "The justification by the petitioners of their petition in the exercise of a right (...)".

Thus, although it is not strictly necessary, the fact of knowing the purpose for which you want to access the information is an element to take into account when weighing up this interest or purpose and the right of the affected person or persons, holders of the data (in this case, the registered persons).

As can be seen from the file, the reason for your request is to be able to check or confirm the identity of the people who are registered in the address, in order to challenge the denial of free legal assistance. As stated by the claimant in the request addressed to the City Council (July 18, 2020), and in the letters addressed to the GAIP (July 15

December 2020 and February 11, 2021), this issue, and the fact that he has to live as a renter in another address would have had a direct effect on the denial of free legal assistance in his favor, a denial that the claimant wants challenge

According to the information contained in the file, the CAJG would have denied the claimant the recognition of the right to free legal assistance, based on article 4 of Law 1/1996, of January 10, on free legal assistance , relating to the exclusion of this right for economic reasons, according to which:

"1. For the purposes of verifying the insufficiency of resources to litigate, in addition to the income and other assets or circumstances declared by the applicant, the external signs that manifest their real economic capacity will be taken into account, denying the right to free legal assistance if these signs, denying the applicant's statement, reveal with evidence that he has economic means that exceed the limit set by law.

2. To assess the existence of sufficient assets, the ownership of real estate will be taken into account as long as it does not constitute the habitual residence of the applicant, as well as the returns on movable capital."

The claimant adds that he is in a situation of social risk for economic reasons, and that his insufficient wealth - which is directly linked to the fact that he must live in a different address than that of which he is a co-owner - prevents him from accessing the free legal defense. In short, the claimant claims to know or confirm which people are registered at the address of his property, as he considers that this information would be decisive in being able to appeal the denial of the right to free legal assistance. Therefore, you would have a legitimate, personal and direct interest in checking whether your ex-partner, together with her new partner, are registered at the address in question, which would have a direct relationship with the possibility of taking certain legal actions and with the exercise of the claimant's rights, in particular, challenge the decision of the CAJG or, in short, obtain free legal assistance.

As has been said, the transparency legislation makes it clear that this weighting criterion must be taken into account (15.3.b) LT).

The information requested in the case examined could allow the intended purpose to be achieved, since, as can be seen from the regulations, the specific purpose of the Register is, precisely, to constitute proof of residence in the municipality and of habitual residence in it (art. 16.1 LRBRL), and its objective is to "record a fact" (section 2.3 Resolution of January 30, 2015), such as the actual fact of residence and registration. Thus, the information requested by the claimant would allow him to confirm the registration of these people, and contribute this information to his claim for free legal assistance.

On the other hand, for the purposes of the weighting of article 24.2 LTC, it is necessary to take into account the effect that the communication of information could have on the rights of the affected persons (art. LOPD), in this case, of people who could be registered in the address, who have submitted allegations to the GAIP stating that they do not authorize the communication of the information.

At the outset, the claimant identifies the two affected persons, even providing a court judgment (acquittal for the two defendants, who are the claimant, on the one hand, and the current

partner of the co-owner, of the other), in which the current partner of the co-owner of the address is identified. Therefore, from the information available, it is clear that the claimant is aware that one of the affected persons is the partner of the other co-owner of the home. The claimant could deduce from this that this person may be registered at the address in question. In any case, this is what the claimant would like to verify with the information he requests from the City Council, with the stated purpose of claiming free legal assistance.

Therefore, it is obvious that the claimant already knows, prior to the access request, not only the identity, but also certain personal circumstances of the two affected people, who are supposed to be registered at the address in question.

For the purposes of weighting, the identity of the persons registered at the address would only be communicated to the claimant, for the explicit purposes of providing this information, verified by the City Council, to the appeal that he intends to present in relation to the denial of the free legal assistance.

Taking into account these circumstances, and the previous information that the claimant already knows about the two affected people, it can be concluded that the communication to the claimant of the requested information must entail a significant interference in the right to data protection of the affected

Another of the weighting criteria provided for in article 15.3.c) of the LT, is "The least prejudice to the rights of those affected in the event that the documents only contain data of a merely identifying character." In the case we are dealing with, the identity of the registered persons and the fact of the registration would only be communicated - or confirmed - to the applicant, and therefore the weighting would be favorable to the right of the information requester, according to this forecast of the LT.

In relation to the affecting rights or interests of third parties, it appears in the file that the affected persons have submitted allegations to the GAIP, following the procedure provided for in article 31.1 LTC.

On the one hand, the pleadings of the current couple of the co-owner state that, based on the provision of article 40 of the TRLMRLC, and of the SAN of February 2, 2001, the data of the Register are confidential, and that the status of co-owner of the claimant does not give him the right to know the requested information. Apart from that, which has already been assessed in this report and which does not detract from the need to make the weighting ex. art. 24.2 LTC, the letter of allegations of this affected person does not provide information about any personal circumstances that could justify the limitation of access, as made clear by article 31 of the LTC.

On the other hand, the statement of allegations of the claimant's ex-partner highlights - apart from the condition of confidentiality of the data in the Register - several personal and financial issues related to the claimant himself which, according to this writing, they would have taken him to live rented voluntarily in another address. The statement of objections adds that the claimant would not be taking care of the financial expenses of the house in question.

Without prejudice to the relevance that this may have for the exercise of patrimonial rights of the affected persons, given the content of the allegations (which refer to the

personal and economic circumstances of the claimant and purely economic issues related to the expenses associated with the domicile), these cannot be considered to provide significant reasons why the confirmation of the registration of the affected person and the claimant's ex-partner should entail a significant prejudice for the right to data protection of these people.

For all this, given that the claimant is a co-owner of the address about which he is requesting information, that the purpose of the access would be to be able to confirm that the persons in question are registered for the purposes of exercising rights and presenting a claim relating to the right to free legal assistance, and that it does not seem that the communication of information should lead to a significant prejudice for the right to data protection of the affected persons, it must be concluded that the data protection regulations are not an impediment to communicating the information requested.

conclusion

The data protection regulations do not prevent the communication of the requested information (knowing the identity of the persons registered at the address in question), given that there may be a direct interest in confirming the registration of the two people at the address of the co-owner in order to be able to enjoy the right to free legal assistance, and that it does not seem that the communication of the information should lead to a significant interference with the right to data protection of the two registered persons.

Barcelona, March 23, 2021