

IAI 17/2021

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 a private individual in relation to the request for access to disciplinary files issued by a Professional Association to a deceased member.

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 the refusal by a Professional College of the request for access to the disciplinary files open to a deceased member.

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 December 4, 2020, the Catalan Data Protection Authority received a letter from Mr. (...), for which he formulated a claim for the alleged neglect of the right of access to the "information on the actions against a collegiate as a result of my complaints from the year 2007", which he had previously exercised against the Col- Law of Administrators of Estates of (...).
2. On January 28, 2021, the APDCAT issues a Resolution in which the claim is not accepted because the object of the claim is not the right of access regulated in article 15 of the RGPD, given that the affected person does not seek to access information about his personal data, but about other types of information held by the claimed entity, and transfers the claim to the GAIP, together with a literal witness of the resolution.
3. On February 1, 2021, the GAIP requests the claimant to amend the access request. On February 5, 2021, the amendment request is reiterated. The claimant responds by email.
4. On February 15, 2021, the GAIP will send the claim to the College requesting a report that sets out the factual background and grounds its position in relation to the claim, as well as the complete file and, if where applicable, specify the third parties affected by the access.
5. On March 8, 2021, the College responds to the request and reports the following:
  - "That we received a first communication from Mr. (...) on November 23, 2020, requesting that we indicate the list of files and resolutions filed by him against Mr. (...). We replied to him on November 26, 2020, indicating that the mentioned gentleman did not belong to this corporation because he was dead."

- On December 1, 2020, he reiterates a request that says "he was denied by phone asking when the death of the mentioned gentleman was recorded (...) which we must deduce is the one referred to initially. He was answered in writing on December 4, 2020 that we cannot provide him with the data he requests because the law regulating the right to privacy recognizes the protection of deceased persons, which can be demanded by their hereditary successors."
- On February 5, 2021, he requests how many claims have been filed by him since 2007 and when Mr. (...). "This request clearly specifies your initial request, which is why, after the corresponding inquiries have been made and the history of the database has been reviewed, it is answered in the email dated February 23, 2021. For this reason, it is necessary to warn of the existence of this response, because it complies with the request of the claimant, indicating the references of the files that were started at the time (107/2010; 356/2012 and 157/2018), without that – consequently— there is no other and without your request going unanswered. You are also informed that the College became aware of the death of the member (...) on July 26, 2020, so that the information requested by the claimant is also completed. On the other hand, it is also indicated that it is not up to us to report this situation of death to the community of owners of which the claimant says he is part, because we have had no contact with the community of owners or its president We inform him, because he asked us about it and he can communicate it to the president, whose identity we -obviously- do not know."

7. On March 10, 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 opinion 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 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

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 (hereinafter, RGPD), provides that all processing of personal data must be lawful (article 5.1.a) and, in this sense, establishes a system of legitimizing the processing of data which is based on the need for one of the legal bases established in article 6.1 to apply. Specifically, section c) provides that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c).

Law 19/2014, of 29 December 2014, on transparency, access to information and good governance, aims to regulate and guarantee the transparency of public activity (hereafter LTC).

Article 18.1 of the LTC establishes: "People have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legally constituted legal person" .

The aforementioned article 2.b) 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 the one supplied by the other obliged subjects in accordance with the provisions of this law".

The professional associations have the consideration of Public Administration in what affects the exercise of their public functions. In this sense, they must comply with the transparency obligations with the limits established by the Law itself, especially those relating to the protection of personal data.

The professional associations have sanctioning powers through the disciplinary regime, aimed at controlling the correct exercise of the members, that is to say, compliance with professional ethics, in order to preserve the rights of users and consumers. In this sense, the information related to the actions carried out by the College in relation to the disciplinary files open to a member is information that must be considered public for the purposes of article 2.b) of the LTC and, therefore, remains subject to the right of access (art. 18 of the

In any case, the right to public information is not absolute and can 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 of the LTC), and the principles of the data protection regulations personal

### III

The person making the claim asks the Professional College for access to the "information on actions against a collegiate as a result of my complaints from the year 2007" and the College denies him access claiming that the college The member whose data is requested is deceased, thus, among other issues, he states: "We replied to him on November 26, 2020, indicating that the mentioned gentleman did not belong to this corporation because he was dead."

It must be said that the data of deceased persons are not subject to protection by the data protection regulations, as established in Recital 27 of the RGPD, which provides that "this Regulation does not apply to data protection Personal information of deceased persons". However, he adds that "the member states are competent to establish rules relating to the treatment of their personal data".

In the same sense, article 2.2.b) Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) is pronounced when it states that this Law "To los tratamientos de datos" is not applicable of deceased persons, without prejudice to what is established in article 3".

It should be noted that Articles 23 and 24 of the LTC do not distinguish as to their applicability to living or deceased persons. However, it is clear that both articles deploy the regulation of the limit to the right of access to public information derived from the right to the protection of personal data. Therefore, it must be understood that the limit provided for in these articles does not come into play when it comes to accessing data of deceased persons.

All this without prejudice to the possibility that access to the information of deceased persons may be limited in the event that the information affects the privacy of the deceased person, as follows from Article 18 EC, Article 21.1.f) of the LTC, Organic Law 1/1982, of May 5, on civil protection of the right to honor, personal and family privacy and one's image and, in particular, article 36 of Law 10/2001 of July 13, of Archives and Documents, according to which the limitation of access for the protection of the right to privacy persists until 25 years after death, or 50 years from date of the document if the date of death is unknown, but it can be presumed - or it is certain - that the person is dead.

On the other hand, taking into account that access is not requested to all the files, nor to specific documents from the files, but "information on the actions against a colegiado a raíz de mis denuncias desde el año 2007", in this information there would not be of having information from other people who have intervened in the file (for example, instructor, body that has resolved, people who have intervened as witnesses, etc.), therefore, it does not seem necessary to make a specific analysis of the impact on the right to the protection of personal data, En

**in any case, given the terms in which access is requested, it can easily be concluded that this personal information would in no case be necessary to attend to the requested access.**

**In accordance with the above, the data protection regulations do not apply in this case regarding access to the requested information.**

**conclusion**

**The limit derived from the personal data protection regulations does not apply to access to the data of a deceased person.**

**Barcelona, April 8, 2021**

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