

IAI 24/2021

**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 city council for the denial of access to a works file as well as the project and its annexes**

**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 the complaint filed against a city council for the denial of access to a file of works as well as the project and its annexes.**

**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 January 17, 2021, a lawyer submits a request to a city council acting on behalf of a member of the community of owners of a building and states that her representative, who lives in a flat located in on a premises where works are being carried out, has a legitimate interest and requests access, in accordance with article 53.1.a) of Law 39/2015, of October 1, of the common administrative procedure of the Public Administrations, "to know the processing status of all those procedures that have as their object to obtain from this City Council any type of license, permit or authorization in order to carry out works or carry out activities in the said premises, obtaining copies of all the documents contained in them. In particular, the work project and its corresponding annexes are of interest to this part."**

**The same document identifies the location, the name of the activity to be carried out, the code of the works communication, the name of the owner of the activity and the name of the technician responsible for the project.**

**2. On February 26, 2021, the head of the Legal Service of the Urban Planning and Sustainability Area of the city council claimed, informs the lawyer of the denial of access by his representative to the requested information, in the following terms:**

**"In response to your request, we inform you that we cannot provide you with the requested photocopy due to an issue of data protection and intellectual property, what we do inform you of is that on May 21, 2020 , the entity TAO YUKI PROJECTS SL presented the previous notification of premises adaptation works (...), for the construction of a ramp and for the improvement of the interior of a premises (execution of partitions), located(...), for the preparation and sale of takeaway food, which was found out favorably on September 15, 2020."**

**3. On March 12, 2021, the member of the community of owners presented a claim to the GAIP against the city council in which he stated:**

"The delivery of a work file and its annexes has been requested, referring to some works that are carried out in the premises downstairs of this address and that affect common elements of the building. Therefore, the Community of Owners believes that they have the right to know where and how these works are being carried out, in order to be able to make the most appropriate decisions.

Delivery is refused arguing the protection of data and intellectual property, however we believe we have the right, at least, to access to the technical parts of the project, technical report, plans, sketches and other technical aspects that can provide us with sufficient information to to be able to make the most appropriate decisions, since these works affect common and structural parts of the building, and therefore must have the VºBº of the Community."

4. On March 15, 2021, the GAIP requests the complained-about town hall 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. At the time of preparing this report, it is unknown whether the city council has responded to this request.

5. On April 8, 2021, 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 repeals Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD).

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, such as limitations derived from intellectual property rights, to which also refers to the answer given by the City Council.

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 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), extends its scope of protection to the personal data understood as all information about an identified or identifiable natural person, and considered identifiable natural person "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, como por ejemplo a number, an identification number, data of location, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person;" (Article 4.1 of the RGPD).

Therefore, the data of legal entities are excluded from this scope of protection, as specified by the RGPD itself, by establishing that "The protection granted by the present Regulation must be applied to natural persons, regardless of their nationality or your place of residence, in relation to the processing of your personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details. (Recital 14).

Consequently, there must be no inconvenience from the perspective of data protection regulations in providing the interested party with the information referring to legal entities that may be contained in the requested documentation and/or information.

In the case we are dealing with, the city council states that the prior notification of site adaptation works that are the subject of the claim was submitted by a legal entity.

Article 4.2) of the RGPD considers "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 collection, registration, organization, structuring, conservation ,

adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction.”

The RGPD provides that all processing of personal data must be lawful, loyal and transparent in relation to the interested party (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 its article 6.1 to apply. Specifically, sections c) and e) of article 6.1 of the RGPD provide respectively, 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", or if "it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment”.

As can be seen from article 6.3 of the RGPD and expressly included in article 8 Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data it can only be considered based on the legal bases of article 6.1.c) and 6.1.e) of the RGPD when so established by a rule with the rank of law.

At the same time, 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, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation.”

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC hereinafter) aims, among others, to "regulate and guarantee people's right of access to public information and documentation" (art. 1.1.b).

Specifically, article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity legally constituted" (section 1). The mentioned 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 which are supplied by the other obliged subjects in accordance with the provisions of this law”.

The information that is the subject of the claim submitted is "public information" for the purposes of the LTC, and remains subject to the access regime provided for in these regulations. This right, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws.

Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the limitations and criteria provided for in the transparency legislation (articles 23 and 24 LTC), and the principles of the personal data protection regulations.

### III

The purpose of this claim is to access the file of the procedure for prior notification of works of reform or adaptation of a premises located on the ground floor of a building in which the claimant is a member of the community of owners.

It can be foreseen that this type of files will contain the personal data of the municipal employees in charge of their processing, of the holder of the request and, where appropriate, of the competent technician responsible for the project.

It can be ruled out, at the outset, that the documents in the file include information deserving of special protection in the terms provided for in article 23 LTC.

With regard to the information on employees or public positions that may be included in the file, article 24.1 of Law 19/2014 provides that "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".

In this case, the identification data (name and surname and position) of the employees or public officials who have intervened in the exercise of their functions in the procedure of the notice of works and in the subsequent control activities would be included.

Article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information, specifies that pursuant to the provisions of Article 24.1 of Law 19/2014, of 29 December, "merely identifying personal data are those consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and postal and electronic addresses, of professional contact, referred to the staff at the service of public administrations, senior officials and managerial staff of the public sector of public administrations".

Therefore, to facilitate the claimant's access to the merely identifying data of public employees who, in the exercise of their functions, have participated in the claimed file, in the terms indicated, in principle would not be contrary to the right to protection of personal data.

### IV

Regarding access to other personal data that may be included in the file, article 24.2 LTC establishes:

"If it is other information that contains personal data not included in article 23 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in 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.”**

**It is therefore appropriate to weigh up the damage that could be caused to the right to data protection of the holders contained in the requested information in the event that access is granted, and the benefits that for the interest public may arise from giving access to this information to the person making the claim.**

**In this case, it is necessary to include both the information related to the person holding the building permit and that related to the technician responsible for the project. Both types of information require, by their nature, a different assessment.**

**A first element to consider when making the weighting required by article 24.2 LTC is the purpose for which access to the information is sought.**

**At the outset, we are dealing with a subject, urban planning, in which the legal system recognizes public action. Thus in accordance with article 12 of the Revised Text of the Planning Law (TRLU), approved by Legislative Decree 1/2010, of August 3, establishes the following:**

**"1. Any citizen, in the exercise of public action in matters of urban planning, may demand before the administrative bodies and before the administrative contentious jurisdiction the compliance with the legislation and urban planning, an exercise which must conform to what establish the applicable legislation**

**2. The public action referred to in paragraph 1, if it is motivated by the execution of works that are considered illegal, can be exercised while the execution is prolonged and, subsequently, until the expiry of the limitation periods determined by articles 207 and 227, without prejudice to the provisions of article 210."**

**In short, public action requires knowledge of the different control instruments, and in this sense, any citizen must be able to know, for the purposes of control of urban planning legality, what have been the intervention and control actions carried out by a City Council when authorizing or, as in the case at hand, allowing the completion of works.**

**Access to the consultation of these files must, however, be limited to data or information related to compliance with the planning regulations on which the public action is based.**

**In the case at hand, the purpose of access may also include this general purpose of controlling urban planning legality that the urban planning legislation legitimizes for any citizen, but beyond that, as indicated by the claimant, the purpose of access is to be able to know the extent of the works given that they affect, as stated in your claim, common parts of the building. Certainly, if any citizen must be able to access the information related to the intervention activities of the urban planning legality, with greater reason a member of the community of owners, who is also the neighbor who occupies the floor located above the premises where the works are carried out, must be able to access the documentation contained in the file, given that they could be directly affected by a possible breach of urban planning laws. And that with**

regardless of whether common areas are affected or not, given that not all the works carried out seem to affect common areas.

This would allow the claimant to know what intervention and control actions have been carried out by the City Council when proceeding to authorize an action in this area, and the technical and legal elements that justify them. The public interest in the control of urban legality could justify access to the identity of the person who owns the works and with more reasons his interest as a neighbor and member of the community of owners would justify it.

In this sense, and in relation to the analysis of the possible damage that access to their identifying data could entail for their privacy, it must be taken into account that the information about the owner of the works was already known to the claimant, as it follows from the content of the request.

On the other hand, with regard to access to the technical project, there are two aspects that must be taken into account.

Firstly, it is clear that for the aforementioned purpose the claimant needs to know whether a project has been submitted, the essential elements of its content and also whether the submitted documentation is signed by a competent technician.

Regarding the content of the project, and without prejudice to the limitations that may be appropriate from the point of view of intellectual property rights, the project is the technical instrument that provides the necessary information in order to check whether the concrete action conforms or not to urban legality. And given that this is the purpose of the access and no other, it would be necessary to provide this documentation with a level of detail that allows to verify compliance with the planning regulations. However, it is necessary to avoid access to those parts of the project that may offer personal information not relevant for this purpose.

Thus, at the outset, a project can offer information about the person who commissioned it (financial capacity, hobbies, lifestyles, aspects that may affect people's safety, or in certain cases, even data from special categories such as health data). For this reason, in general, it does not seem appropriate to facilitate certain parts of the project that can provide this type of information and that are not relevant from an urban point of view. Thus, for example, the delivery of the budget, the details of materials, aspects linked to interior design, etc. might not be relevant.

However, it must be borne in mind that in the case we are dealing with it is not a project of a space intended for the development of people's private lives, but of a place for the preparation and sale of food to take away, so the attachment to people's private lives would be much less.

In addition, in relation to the type of activity that, as indicated by the city council in its response to the access request, it wants to develop in the premises (production and sale of takeaway food), it is necessary to take into account taking into account the fact that the activity is subject to intervention in accordance with environmental regulations.

Access to information related to the environment has a specific access regime provided for in Law 27/2006, of 18 July, which regulates the rights of access to information,

of public participation and access to justice in environmental matters (henceforth, LAIA), which recognizes citizens' right to access the environmental information available, in this case, to the City Council, without which that they are obliged to declare a certain interest (article 3 LAIA). To the extent that any citizen can access environmental information (which would include that relating to the urban legalization of the activity) with more reason in the case at hand this right should be recognized to the claimant than as a direct neighbor of the premises where intends to carry out the activity may be affected by it.

Secondly, and with regard to the data of the technical author of the project, in line with the criterion adopted by this Authority previously (among others in reports IAI 30/2016 and IAI 5/2017), although the professional performance of the technician occurs within the scope of his private professional sphere, from the moment when this necessarily passes through the control and intervention of the administration competent to grant the planning license, or in the case that concerns us by supervise the prior communication, that professional action transcends the exclusively private sphere, and from here it cannot be ignored that the fact of being able to know who is the technician responsible for the work project is necessary for the processing of the corresponding prior communication before the City Council has public significance.

To this fact it should be added that although it cannot be ruled out that the disclosure of the identifying data of the responsible technician may have consequences for him (for example, to the extent that knowing that he is the person responsible for the project may condition future hirings ) nor can it be concluded that these must necessarily be negative.

On the other hand, it cannot be considered that their identifying data should require specific protection or confidentiality, especially if it is taken into account that it is information that the corresponding professional associations must already make public.

In addition, the identity of the responsible technician is information that was already known to the claimant as can be seen from the content of the request for information made to the City Council.

This means that, once the damage test has been carried out, it cannot be concluded that providing this information will necessarily cause additional damage that justifies denying access. For this reason, the weighting of rights would, in this case, favor access.

## Conclusions

The data protection regulations would not prevent the claimant's access to the file of the procedure for prior notification of works of reform or adaptation of a premises.

Barcelona, April 20, 2021