

IAI 25/2021

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim presented against a City Council for the denial of access to the weapons files of the members of the Local Police

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 claim presented against a City Council, for denying access to the files of weapons of members of the Local Police.

Having analyzed 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, I issue the following report:

Background

1. On January 12, 2021, a member of the Local Police of (...) presents a letter to the City Council of this municipality requesting:

"1. (...)

2. View the weapons file of each of the members of the Local Police of (...) who have been assigned a short firearm by the service, in order to check the shooting practices and the psychotechnical reviews carried out, in accordance with article 51.3.a) of Law 39/2015, of October 1, on the common administrative procedure of Public Administrations."

2. On February 2, 2021, the Mayor-president of the City Council issues a resolution in relation to the aforementioned access request in the following terms:

"First.- (...)

Second.- Deny the hearing of the weapons file of the members of the Local Police of (...) pursuant to the provisions of article 27.2 of Decree 219/1996, of June 12, which approves the Local Police Arms Regulations."

3. On February 25, 2021, the applicant submits a claim to the GAIP against the City for denial of access to the requested information.

4. On March 3, 2021, the GAIP sends the claim to the City Council, requiring it to issue a report on which to base its positions, as well as the complete file relating to the request for access to public information and the identification of third parties affected by the requested access.

5. On March 29, 2021, the City Council sends the GAIP the complete file relating to the request for access to public information.

6. On April 12, 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 governance, 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 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 (article 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/EC (General Data Protection Regulation, hereafter RGPD).

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

Article 4.2) of the RGD 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 RGD provides that all processing of personal data must be lawful (Article 5.1.a) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides that the treatment will be lawful if "it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

For its part, article 86 of the RGD provides that "the personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, organism or entity in accordance with the Law of the Union or 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 (hereafter, LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC recognizes the right of people to "access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal entity" (section 1).

Article 2.b) of the LTC defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law".

The present claim is filed against the denial of access to the weapons file of each of the members of the Local Police. This information must be understood as public for the purposes of article 2.b) of the LTC and subject to the regime of the right of access (article 18 LTC).

It should be pointed out, at this point, that the person making the claim alleges in his letter of claim that he holds the status of representative of the official staff of the claimed City Council.

The first additional Provision, section 2, of the LTC provides that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law. "

Boards or staff delegates (article 39 of Royal Legislative Decree 5/2015, of 30 October, approving the revised text of the Law on the Basic Statute of the Public Employee (TRLEBEP)), as well as the Company Committee (article 63 of Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law (ET)), are the specific bodies of representation

of civil servants and public workers with employment contracts respectively and, as such, exercise the functions granted to them by the corresponding regulations (articles 40 TRLEBEP and 64 ET).

Personnel delegates, for the exercise of their functions, have a specific regime of right of access to information provided for in articles 40 of the TRLEBEP and 64 of the ET, and, consequently, it is these rules that would be necessary apply with priority, without prejudice to the supplementary application of the access regime provided for in the transparency legislation.

However, beyond the statements of the person making the claim regarding the fact that she holds the status of official staff delegate, there is no documentation attesting to this status in the file sent.

Although abstractly this circumstance (that the person making the claim could be a delegate or representative of the workers) could be relevant, given that, as has been said, the representative bodies of public workers have recognized legitimacy to receive information for the 'exercise of their legitimate functions of representation (articles 40 TRLEBEP and 64 ET), to point out that in the present case there is no specific provision in the applicable regulations in which it is established the need to deliver to the representatives of public workers the controversial information (weapons files).

Given this, with respect to this claim, it is necessary to take into account the provisions of the transparency legislation, according to which the right of access to public information (Article 18 LTC) is not absolute and can be denied or restricted for the reasons expressly established to the laws (article 20 et seq). 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

Article 23 of the LTC, relating to personal data deserving of special protection, establishes the following:

"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 affiliation, religion, beliefs, 'racial origin, health and sexual 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 affected party expressly consents by means of a written which must accompany the application."

In similar terms, article 15.1 of Law 19/2013, of December 9, on transparency, access to public information and good governance, in its wording given by the eleventh final provision of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (LOPDGDD), provides that:

"1. If the requested information contains personal data that reveal the ideology, trade union affiliation, religion or beliefs, access can only be authorized if there is the express and written consent of the affected person, unless said affected person had made it manifestly public the data before access was requested.

If the information includes personal data that refers to racial origin, health or sex life, includes genetic or biometric data or contains data related to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, access only it may be authorized if the express consent of the affected person is counted or if the latter is covered by a rule with the force of law.”

In view of this and the lack of having the allegations that could have been formulated by the affected persons - to whom the request and/or claim should have been forwarded in accordance with articles 31 and 42 of the LTC-, it should be noted that, in general, access to specially protected data (Article 9 RGPD) that may be contained in the files of claimed weapons must be excluded.

Article 11 of Decree 219/1996, of 12 June, which approves the Local Police Arms Regulations, provides, in relation to weapons files, that:

"The town councils will open to each of the members of the local police a file containing all the data relating to the conservation, possession and use of the weapons and ammunition that they are legally equipped with, and any other data of interest related to the possession and use of the firearm. Periodic reviews, practices or training courses completed will also be included."

The reviews referred to in this article 11 include, according to Decree 219/1996 itself, psychotechnical reviews, consisting of "aptitude battery, personality questionnaires and other tests to detect dysfunctions or character anomalies and, if deemed necessary, personal interview or other complementary tests" (article 23), as well as medical examinations (article 24).

For its part, article 27 of Decree 219/1996 establishes that:

"27.1 The results of the psychotechnical and medical reviews and the police marksmanship training practices will be incorporated into the personal file referred to in article 11 of this Decree.

27.2 The reports and contents of the psychotechnical and medical tests that justify the pass or fail result will be under the exclusive custody of the technicians who carry them out."

From the joint reading of these precepts, it follows that, with regard to the tests carried out by the local police on their ability to carry firearms, their weapons file will only contain the result obtained, which, as regards in the psychotechnical and medical examinations, it will consist of a pass/fail. The weapons file will therefore not include the reports and the specific content of these tests, which will remain in the possession of the specialist technicians who carried the

The data on a person's fitness to carry a firearm, in view of the nature of the tests to be carried out for this, constitutes data relating to his health (Article 4.15) RGPD), that is to say, a data deserving of special protection (Article 9 RGPD), so its confidentiality will have to be preserved, unless the express consent of the affected persons was provided with the request or if any other of the enabling circumstances provided for in article 23 of the LTC or in article 15.1 of Law 19/2013, mentioned. If you don't compete

in these circumstances, the right to data protection would prevail over the right to access said information.

On the other hand, as we have seen, the weapons file must contain any information of interest related to the conservation, possession and use of the firearm by the policeman to whom it refers the said file (article 11 Decree 219/1996).

Given this, it cannot be ruled out that, apart from the suitable/unsuitable data referred to, there could also be other types of information deserving of special protection, such as, for example, information on a possible withdrawal of the firearm due to physical or mental deficiencies detected in the person who owns it or related to the commission of crimes or administrative infractions. If so, access to this sensitive information should also be limited.

IV

In relation to the rest of the personal data that may be contained in the files of weapons that are not considered to be specially protected, it will be necessary to adhere to the provisions established in article 24 of the LTC, according to which:

"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. (...)"

Section 1 of this precept of the LTC allows access to the merely identifying data of public employees who intervene by reason of their functions in the different procedures or public actions carried out by the Administration, unless specific circumstances arise that justify the prevalence of the right to data protection of the person or persons affected.

In this sense, article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC) specifies what is meant by merely identifying personal data in the following terms:

"For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and addresses, postal and

electronic, of professional contact, referring to personnel in the service of public administrations, senior positions and managerial staff in the public sector of public administrations.

In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature. If the signature is electronic, the electronically signed document must be published in such a way that the properties of the electronic certificate used for the signature cannot be accessed.

The location data must be deleted in the event that it is not merely identifying data of the author in his position of position or staff in the service of public administrations.”

Therefore, to facilitate the claimant's access to the merely identifying data of public employees that may appear in the weapons files for the purpose of the exercise of their functions, in the terms indicated, in principle would not be contrary to the right to the protection of personal data.

In the event that these employees were members of the Local Police, their identification should be carried out through their professional identification number in place of their first and last names (article 70.3 RLTC), despite the fact that this information could already be known by the person making the claim, as a member of the Local Police itself.

v

With regard to the rest of the data (information on the possession and use of weapons and ammunition, which do not include data deserving of special protection, as well as the results of practices or training courses in police shooting) paragraph 2 of article 24 of the LTC, mentioned above, will be applicable, therefore, for the purposes of granting access, it is necessary to make a reasoned weighting between the public interest in the disclosure of the information a

It should be noted, at this point, that the claimant invokes in his request for access article 53.1.a) of Law 39/2015, of October 1, on the common administrative procedure of Public Administrations (LPAC), according to which the interested parties have the right to access and obtain a copy of the documents contained in the procedures in which they have this condition.

This circumstance, if concurred, could justify a different treatment with regard to the possibility of accessing certain personal information from the claimed files to what would correspond if it were a third party unrelated to the procedure.

In accordance with article 4.1 of the LPAC, the following are considered interested parties in the administrative procedure:

"a) Those who promote it as holders of individual or collective legitimate rights or interests. b) Those who, without having initiated the procedure, have rights that may be affected by the decision that is adopted therein.

c) Those whose legitimate interests, individual or collective, may be affected by the resolution and who appear in the procedure until a definitive resolution has been reached.”

In accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses what is the purpose he pursues and ultimately the reasons for which he is interested knowing the information adds a very important element to be taken into account as a weighting criterion between the public interest in the disclosure of the information and the rights of the people affected.

Based on the information available, the City Council would have opened a file or procedure against the person making the claim due to the request of the accidental Chief of the Local Police in which he requested that this person submit to the extraordinary review established in the Article 26 of Decree 219/1996.

Although, in relation to this procedure, the person making the claim would have the status of interested party, it should be borne in mind that the requested information (the weapons files of the other members of the Local Police) would not be part of this procedure. Therefore, he could not be granted the right of access to the disputed information on the basis of his status as an interested person.

The allusion to this alleged status of interested person, which is reiterated in the letter of claim, could be related, from the information available, to the fact that the person claiming in his letter of request of access to weapons files would also have brought to the attention of the City Council some facts that, in his opinion, should lead to the withdrawal of the firearm from the rest of the members of the Local Police.

In accordance with the jurisprudence, the reporting person has a legitimate interest in order to be considered interested to the extent that the resolution of the administrative file can produce a positive effect in his legal sphere, or eliminate a burden or encumbrance. However, in accordance with article 62.5 of the LPAC, the presentation of a complaint does not confer, by itself, the status of an interested party in the procedure. Therefore, his position regarding the requested access would not differ in this case from that of any other citizen.

In the present case, the claimant states in his request for access that he wants to see the weapons file of each of the members of the Local Police "in order to check shooting practices and psychotechnical reviews carried out." In the letter of claim, he points out that he is requesting access "to check the shooting practices carried out as well as the pass or fail results of the weapons psychotechnics carried out on each of the agents."

In view of these manifestations, it can be understood that the claimant limits the object of his claim to the results of the training tests of the Local Police officers to carry firearms. Therefore, it should be excluded from access, so as not to be of interest to the person making the claim, the information that may be contained in the weapons files relating to the possession and use of weapons and ammunition which each local police is legally equipped with.

Remember that it should also be left out, despite the express request of the person making the claim, the results of passing or not passing the psychotechnical and/or medical examinations to which the agents have undergone, as they are 'information deserving of special protection (article 23 LTC).

The requested access should in any case be understood as framed within the purpose of the transparency law itself, which, in accordance with its article 1.2, is "to establish a system of relationship between people and the public administration and the other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and responsibility in the public management."

The control of the actions of the Administration in matters of personnel or management of human resources is one of the objectives aimed at transparency (this is clear from the statement of reasons of the LTC).

Given the motivation of the access, it could be assumed that the ultimate objective intended by the person claiming, in requesting said information, would be to denounce the lack of training of the members of the Local Police to carry the weapon of regulatory fire, which should lead, on the part of the competent bodies, to the adoption of the precautionary measure of withdrawal (Decree 219/1996).

However, it must be taken into consideration that it is stated in the file that this possible lack of training would have already been brought to the attention of the City Council, as well as that the City Council has already informed the person claiming that the appropriate psychotechnical tests and the reasons why shooting practice has not yet been carried out. These elements already allow the control of municipal action in this matter.

On the other hand, it should be borne in mind that the information requested by the person making the claim refers to the results obtained by the officers of the Local Police in the training exercises or practices in police marksmanship carried out throughout their professional career (according to article 25 Decree 219/1996 these exercises are carried out at least twice a year). These results, grouped with respect to the same person throughout his professional life, can give rise, from the data protection side, to the preparation of a profile on his professional capabilities, the disclosure of which could produce significant negative effects on the affected person, especially in the workplace, without which, both from the point of view of transparency and data protection, it can be considered justified.

On the other hand, the possibility of handing over anonymized data should also be ruled out. In a case like this, the elimination of the personal identifying data of the affected people would not seem to be an effective tool to guarantee the anonymity of the information provided, given that, in view of the number of members the Police staff has Local, of which the person making the claim is also a part, it cannot be ruled out that the information could easily be linked to a specific identifiable person.

For all that, the claimant's access to the requested information about the results of the shooting practices contained in the controversial weapons files is not considered justified.

conclusion

The person making the claim cannot access the weapons files of the members of the Local Police, which contain, among other information, the results of the training tests that have been practiced throughout their professional career in order to of being able to carry firearms.

Barcelona, May 7, 2021

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