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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 a councilwoman's request for access to various files, to the minutes of the Boards of government that are missing to be published on the transparency portal and the town hall's entry register.

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 the denial of the request a councilor's access to several files, to the minutes of the Governing Boards that are missing to be published on the transparency portal and the town hall's entry register.

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 Adviser, I report the following:

#### Background

1. On March 18, 2021, an instance of a councilor was submitted in the register of a town hall (with number 2021-E-RE-309), by which he requested to be given access to various municipal files.

On the same date, the councilor presented another instance (with number 2021-E-RE-310) by which he requested that he be given access to several files, the publication of the minutes of the Governing Boards that were missing for publish on the transparency portal, as well as access to the town hall's entry register through the Gestiona manager.

2. On March 22, 2021 through mayoral decree no. 2021-0245 the city council resolved both requests for access to information, with the following operative part:

"

First.- Authorize access to the information related to the requested files described below to the councilor (...), acting on behalf of the municipal group(...): - File 2074/2020 (Reis 2021) .

- File 1257/2020 (pool services contract 2020).
- File 1297/2020 (2020 municipal pool income control)
- File 1468/2020 (minor contract for the supply of swimming pool maintenance products 2020)

- File 1879/2020 - File

1778/2020 - File

2121/2020 - File

2146/2020 - File

172/2020 - File

2095/2020 (minor contract for the removal of sidewalk grass and streets throughout the municipality)

- File 333/2020 (minor contract weed control municipality 2020, herbicide supply)

- File 1352/2020: Alienation of patrimonial asset minibus vehicle through competition.
- File 779/2020: Tender for the private use of the public domain (parking lots) through non-sedentary sales licenses from the municipal market.

Second.- Deny the request for access to information to the councilor (...), acting on behalf of the municipal group (...), to the following files that are in the investigation phase, which will have to be made public in accordance with the transparency regulations within three months of its resolution, the request for access shall be rejected:

- Municipal register of vacant properties (IBI surcharge).
- Subsidies entities 2020.
- Files 804/2020 and 803/2020 of aid to families and the self-employed affected by the economic consequences of COVID-19.
- Establishment of a job board for nursery school educators.

In accordance with article 29.1 of Law 19/2014, of December 29, on transparency, access to public information and good governance, requests for information on files in the preparation phase which are must make public, in accordance with the transparency obligations of Title II, within a period of three months. (..)"

In the resolution, regarding access to the town hall's entry register, the following considerations are included:

5a.- Regarding the right to access the town hall's entry register through the Gestiona manager, art. 16 of the ROF, provides that the delivery of copies will be limited to cases of free access of Councilors to information and to cases in which this is expressly authorized by the President.

However, it should be borne in mind that from the numerous jurisprudence on the matter it can be inferred that in the development of Article 23 CE there is no rule that enshrines the right of councilors to indiscriminately obtain legitimate access to the documents that make up the register of entry or the complete municipal files, to which they have the right to examine, as stipulated in articles 77 LRBRL, and 15 and 16 ROF.

3. On March 30, 2021, the councilor submits a claim to the Commission for the Guarantee of the Right of Access to Public Information (GAIP), for the neglect of three requests for access made to the town hall. The GAIP agrees to process the claim in two separate files.

With regard to the requests that are the subject of this report, the claimant states in the claim that "(...)I received notification approving access to some of the files, denying access to others under the pretext that they were in process, (...), not all the boards were posted on the transparency portal and we have been denied access to the register (explanatory written contribution)."

4. On March 31, 2021, the GAIP requests the city council to issue a report on the claim submitted, identify the third parties affected by the access, send them the completed file to which it refers and indicate the person or persons who will represent the town hall at the mediation session.

On April 15, the city council sends the requested report to the GAIP. This report states the reasons why the councilor's access to the town hall's entry register through the Gestiona manager has been denied.

5. On April 19, 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 Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

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

The object of the complaint is, as can be seen from the statements of the complaining party and the set of information contained in the file, direct access in his capacity as a municipal councilor to the entry register of the town hall through the Gestiona electronic application, in addition to the publication of the minutes of the Governing Boards that were missing to be published on the transparency portal and access to files to which access has been denied to find- are in the investigation phase, regarding which the claimant has been informed that they will be made public in accordance with the transparency regulations, within three months of their resolution.

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 (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".

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.c) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment.

The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 EC), as recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

For its part, 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, 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."

From all this it follows that the councilor's access to personal data that may contain the information requested on the basis of the fulfillment of a legal obligation by the city council (responsible for the treatment (art.6.1. c) RGPD), must necessarily be covered by a rule with the status of law.

According to article 18 of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) "people have the right 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" (paragraph 1). The information contained in the decrees issued by the city council is information prepared by the Administration for the purposes of article 2.b) of the LTC, and therefore remains subject to the right of access in the terms provided for by the legislation of transparency

Now, the second section of the first additional provision 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."

In this case, the person requesting access has the status of councilor of the corporation, and therefore, the assessment that can be made regarding the obligation to provide or not provide personal information of third parties must be examined taking into account the right of access that the local regime regulations attribute to councilors - that is, Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) and the revised text of the Law municipal and local regime of Catalonia, approved by Legislative Decree 2/2003, of April 28 (TRLMRLC) - regarding that information available to the city council that is necessary for the fulfillment of its functions.

This without prejudice to the fact that the councilor who requests information must be granted at least the same guarantees regarding access to information as the rest of citizens who do not have this condition of elected office, given the 'supplementary application of Law 19/2014 (additional provision first section 2).

### III

As this Authority has done on previous occasions (among others, reports IAI 48/2019, IAI 52/2019, IAI 56/2019, IAI 3/2020 or IAI 41/2020, which can be consulted on the website <http://apdcat.gencat.cat>), the local regime legislation recognizes a right of access to all elected officials, regardless of whether they are in the government team or in the opposition, to the information available to them local corporation and that may be necessary for the exercise of the functions that correspond to them.

Point out that, as can be seen from these reports, the right of access to municipal information corresponds to councilors and not to the municipal group.

Thus, article 77.1 of the LRBRL establishes that "all members of local corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the services of the Corporation and are necessary for the development of their function".

In the same sense, the TRLMRLC pronounces itself, by providing, in its article 164.1, that "all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions, in accordance with repeated jurisprudence on this issue (SSTS September 27, 2002 , June 15, 2009, among others), is part of the fundamental right to political participation enshrined in article 23.1 of the Spanish Constitution, according to which "citizens have the right to participate in public affairs, directly or through representatives, freely elected in periodic elections by universal suffrage."

It should be borne in mind that the elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis, study and information of the necessary antecedents that have the services of the city council, for their control work and to document themselves for the purposes of adopting decisions in the future (among others, STS of March 29, 2006).

However, the exercise of this right of access to municipal information is in any case subject to certain conditions provided for in the TRLMRLC, cited, and in the Regulation on the organization, operation and legal regime of local entities ( ROF), approved by Royal Decree 2568/1986, of November 28, without prejudice to what may be established by the organization and operation regulations of each local entity.

It is therefore necessary to analyze the legal provisions of the aforementioned regulations in order to assess whether the local regulations, or alternatively the transparency legislation, would enable the access claimed by the councilor in the present case.

#### IV

Article 164.2 of the TRLMRLC establishes in which cases the corporation's services must provide information directly to the elected members. Thus, this article provides:

"2. The corporation's services must provide information directly to the members of the corporations when: a) They exercise delegated functions and the information refers to matters of their own responsibility. b) These are matters included in the agenda of the sessions of the collegiate bodies of which they are members. c) It is about access to information or documentation of the local corporation that is freely accessible to citizens."

In the same sense, article 15 of the ROF establishes:

"Notwithstanding what is provided in number 1 of the previous article, the local administrative services will be obliged to provide the information, without the need for the member of the Corporation to certify that he is authorized, in the following cases:

a) When it comes to the access of members of the Corporation who hold delegations or management responsibilities, to their own information.

**b) When it comes to the access of any member of the Corporation, to the information and documentation corresponding to the matters to be dealt with by the collegiate bodies of which they are part, as well as to the resolutions or agreements adopted by any municipal body.**

**c) When it comes to the access of the members of the Corporation to the information or documentation of the local entity that are freely accessible to the citizens.**

**Direct access does not mean, however, that there is a right to indiscriminate access to the information referred to in these articles, but rather that before making this information available to councilors, the city council must take the appropriate measures, which they may vary in each case, in order to facilitate access to information without violating the right to data protection, especially with regard to special categories of data or others that require special protection.**

**In the case at hand, the councilor's request aims to access the town hall's ticket register through the management application that the town hall uses, as well as access to certain municipal records. This request goes beyond the direct access provisions of article 164.2 TRLMRLC, so it will be necessary to take into consideration what is established in article 164.3 TRLMRLC, as well as the procedure applicable to these requests for access provided for in the article 14 of the ROF.**

**Article 164.3 TRLMRLC, establishes.**

**"3. In the other cases, the request for information is understood as accepted by administrative silence if a negative resolution is not issued within four days from the date of presentation of the request. In any case, the negative resolution must be motivated, and can only be based on the following assumptions:**

- a) When the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's own image.**
- b) When it comes to matters affected by the general legislation on official secrets or for summary secrecy."**

**Article 14 of the ROF establishes:**

**"1. All members of the Local Corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information available to the Corporation's services and that are necessary for the performance of their duties.**

**2. The request for access to the information will be understood to be granted by administrative silence in the event that the President or the Government Commission does not issue a resolution or negative agreement within five days, counting from the date of request.**

**3. In any case, the denial of access to the informative documentation must be done through a reasoned resolution or agreement."**

In accordance with this regulation, requests for access to information held by the corporation's services made by councilors must be subject to an authorization procedure by the president or the Board of Governors. These requests may be denied when any of the circumstances provided for in articles 164.3 of the TRLMRLC occur, but they could also be denied, given the nature of the right to data protection (STC 292/2000), when there are other circumstances specific related to personal data that justify it, in particular under the principle of data minimization, according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated" (Article 5.1.c) RGPD)).

This principle implies, on the one hand, that access to municipal information that includes certain personal data, without the consent of those affected, must necessarily be linked to the exercise of the functions that correspond in each case to the councilor who is dealt, in the terms provided for in the local regime legislation (whether they are part of the governing bodies or not).

Thus, the processing of personal data that may be carried out by councilors who do not have assigned government responsibilities, as would happen in the present case, would find its justification, from the perspective of data protection, in the exercise of the functions that are assigned as members of collegiate bodies of the local entity itself and, in a special way, in the functions of control and supervision of municipal action, such as the formulation of questions, interpellations, motions or until and all the motion of censure, which the local regime regulations attribute to the

On the other hand, the principle of minimization requires that a weighting exercise be carried out, in order to assess the implications that, in each case, the exercise of the right of access to the information of the councilors may have for the rights of the people affected, taking into account, for this purpose, the circumstances of the specific case, the personal data contained in the requested information, the intended purpose and the terms with which the request is formulated or the possible

The aim of this weighting is to prevent excessive or irrelevant personal data from being communicated to the councilors to achieve the intended purpose of the access, which must necessarily be linked to the performance of the functions of the councilors who request the information.

It must be taken into consideration that the municipal information requested, in the case of access to the town hall's entry register, may be related to any of the areas of competence of the corporation (works and services, economic management, treasury, services social, urban planning, environment, public transport, human resources, etc.), and have as their object the awarding of works or services, the granting or denial of grants or subsidies, permits or licenses, the appointment or termination of personnel, the imposition of fines or administrative sanctions, etc. Therefore, the type of personal information contained in the information available to the city council can be of different nature and affect the privacy of the people it refers to to a greater or lesser degree.

Thus, it cannot be ruled out, depending on the area of municipal action, that there may be special categories of data (Article 9 RGPD), data included in this category with a specific regime (those relating to administrative offenses or criminal), or data deserving of a special reservation or confidentiality due to the concurrence of certain circumstances



qualified (for example, situations of social vulnerability, data on minors, data related to gender violence, the possibility of drawing up socio-economic profiles, etc.).

These circumstances could act as a limit to the councilors' right of access to the controversial information, in the event that the relevance of the specific identification of these persons for the exercise of the functions attributed to them is not sufficiently proven to elected officials.

Nor can it be ruled out that the information or the municipal files contain other unnecessary personal information to achieve this purpose of control and supervision of the municipal action that would justify the councilors' access, which should be excluded in any case.

As the Authority has pointed out, and in accordance with local regime legislation and the jurisprudence of the Supreme Court, councilors cannot be required that, in order to access municipal information, they must explain or justify the purpose of their request, since the reason for their request must be understood as implicit in the exercise of their functions as councilors, who are responsible for the control and supervision of the governing bodies of the corporation, as explained in article 22.2.a) of the LRBRL.

Now, interpreting the provisions of local regime legislation and the jurisprudence of the Supreme Court, in connection with the RGPD and with the need to circumscribe access to personal data within the framework of a legitimate purpose, they can be considered consideration of the statements made by the councilor specifying the purpose for which they are requesting this access in order to facilitate the weighting that the city council, as responsible, must carry out to assess the appropriateness of access to certain personal data, based on

The will of the councilor in the present case "to be able to have access to as much information and documentation as is necessary for us to carry out our task as a municipal group of the city council(...)" is not a reason sufficient to justify indiscriminate access to this personal information, which can seriously affect the privacy of the people affected.

Given these circumstances, it cannot be concluded that, from the point of view of data protection, the generalized access of councilors to all the information that the council has in the electronic application that manages the ticket register is adequate .

For this reason, pursuant to article 164.3 of the TRLMRLC, and in application of the principle of data minimization, it would be contrary to the RGPD to provide councilors with generalized access to all municipal information contained in the register through of the Gestiona electronic manager (or through any other means), as requested, given that this would prevent the city council from carrying out the weighting of conflicting rights and interests that, as the responsible party, it must carry out to assess the membership of access to the personal data that may be contained in said information.

v

With regard to access to the files that the claimant requested and that have been denied for being files in process, in accordance with the considerations made, the authorization of access to

municipal records require a prior weighting in order to exclude information that is considered unnecessary to achieve the purposes that underpin the access, especially that related to special categories of data (art. 9 RGPD), or other information deserving of special protection, such as that related to the commission of criminal or administrative offences, or any other that involves revealing information about people in a situation of special social vulnerability.

The first of the files claimed refers to the Municipal Register of vacant properties (IBI surcharge). Although the file relating to the above-mentioned register is not available, it seems that this responds to the provision of the city council's fiscal ordinances that establish a surcharge to the IBI with respect to those properties declared as unoccupied, of in accordance with the provisions of article 72.4 of the Revised Text of the Local Finances Regulatory Law approved by Royal Legislative Decree 2/2004, of March 5. In the event that the property owners are natural persons, the limit derived from the right to the protection of personal data will apply.

Points 4 and 5 of article 7 of fiscal ordinance number 1 Regulating Property Tax Real estate, with the modification introduced by the Plenary agreement of October 22, 2019, which can be found on the council's electronic headquarters (Local Transparency Portal), provides for:

"4. Homes that meet the above characteristics of permanently vacant properties must be registered in the municipal register of permanently vacant properties managed by the city council for this purpose. Likewise, the variations that affect this qualification of the property or that may determine its removal from the register must be disclosed.

The registration can be done voluntarily by the holder of the corresponding right or by the city council itself based on the information it obtains in the exercise of its powers.

5. In any case, the declaration of permanently vacant residential real estate by the city council will comply with this procedure:

a) The procedure will be initiated through a resolution stating the signs of unemployment, which will be notified to the taxable person. In any case, the city council can base its decision on data from the municipal population register or on reports from the municipal technical services.

The initial resolution will grant a hearing procedure for a period of 10 days, counting from the day after the notification of the indicated resolution, the interested party may formulate the allegations he deems appropriate, as well as provide any means of proof in defense of his right.

b) Based on the allegations and evidence provided, the procedure will end with the declaration, if appropriate, of a permanently vacant residential property."

It is unknown if this record contains information that can be directly qualified as tax information, or if applicable, cadastral information that is considered protected information in accordance with article 51 of Royal Legislative Decree 1/2004, of 5 March, which approves the revised text of the Real Estate Cadastre Law (LC). In any case, it does seem clear that the regulation of this register obeys a tax purpose (to apply a surcharge to the IBI in accordance with

the aforementioned regulations), whereby providing the information contained in this register may entail revealing information with tax implications on the estates and, indirectly, on the persons holding them, to whom the said surcharge would apply.

In this regard, it is necessary to take into account the special duty of secrecy established by the tax regulations (art. 95 LGT) on this type of information.

On the other hand, and in accordance with what is established in the law regulating local assets and also the legislation on housing, it is not known that the purpose of this register includes providing information to the population in general about vacant properties to the municipality, but only its use by the corporation itself for the purposes of managing the municipal competences in matters of housing and, specifically, for tax purposes.

In any case, in accordance with current regulations, this is not a record for public consultation, which is consistent with the purpose pursued and with the fact that general knowledge of this circumstance may generate a risk for what about your occupation

Taking all this into account, it does not seem that access by the population as a whole to the information contained in this register is justified.

However, it cannot be ruled out that this information may be relevant for councilors to exercise their control function of the government team. In this case and so that the councilor can evaluate the municipal action and the effectiveness of this measure, the councilor can access anonymized information about the number of homes that have been entered in the register, the length of stay in the registration or on the amounts collected in this way, etc. This access would not pose any problems from the point of view of personal data protection regulations.

Beyond this, it may also be necessary for the councilor to be able to check that a certain property that shows signs of being unoccupied has been registered in the register (remember that the registration should be made ex officio by of the town hall). But in this case, in order for the councilor to know whether a property is registered or not, it would not be necessary to access all the properties registered in the register, but only the specific property or properties in question. And with respect to these properties, it would not be justified to access the tax data or protected cadastral data that may be contained in this register, not even the direct identification of the owners of the aforementioned properties, but simply, taking into account that in principle it will deal with urban properties, the address of the farm of those properties.

With respect to the file relating to grants to entities 2020, it must be taken into account that the RGPD extends its scope of protection to personal data understood as all information about an identified or identifiable natural person, therefore, they are excluded from this area of protection of the data of legal entities. Consequently, there must be no inconvenience from the perspective of data protection regulations in providing the councilor with the information referring to legal entities applying for subsidies that may be included in the requested documentation. On the other hand, for the exercise of his powers of control of municipal activity, it does not seem necessary for the councilor to have access to the data of the representatives of the entities that may appear in the files relating to the subsidies claimed.

In accordance with the principle of data minimization (Article 5.1.c) RGPD) these data would be excessive for the purpose pursued.

**With regard to the file relating to aid to families and the self-employed affected by the economic consequences of the COVID-19, in the weighting of interests at stake it must be taken into consideration that in matters of subsidies and public aid the principle of publicity governs .**

**In this sense, article 15 of the LTC establishes a detailed regulation regarding the advertising of subsidies and public aid in the following terms:**

**"1. The information relating to subsidies and public aid that the obliged subjects must make public in application of the principle of transparency must include: (...) c) The subsidies and public aid granted, with the indication of the amount, the object and the beneficiaries. This information must include grants and aid, must be up-to-date and must refer to the last five years. It must also include subsidies and grants awarded without advertising and competition if these requirements have been exempted, in the cases established by law. In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved.**

**(...)."**

**This precept expressly enables the disclosure of information on subsidies and public aid granted regarding the amount, the object or purpose and the identity of the beneficiaries, in order to enable citizens to know exactly who receives a subsidy, what amount and what is it for? However, it is expressly provided for the preservation of the identity of the beneficiaries of those subsidies and public aid that are granted for reasons of social vulnerability, a fact that denotes the intention of the regulations to preserve their identity on the basis of the expectation that your identity will not be disclosed to third parties in an indiscriminate manner to fulfill transparency purposes.**

**In the case at hand, even though the aid is for families and self-employed people affected by the consequences of COVID 19, with the information we have (the corresponding file has not been attached) it cannot be conclusively stated that it is aid that is granted for reasons of social vulnerability. In the event that this is the case, given that the councilor's request is based exclusively, as has already been explained, on being able to have access to the information necessary to carry out the control task at the town hall, no is considered a sufficient reason to justify access to this personal information that is subject to special protection. And, as a result, it would be necessary to facilitate access to grant files by removing the information relating to the beneficiaries of these.**

**Finally, with regard to the file relating to the establishment of a job board for nursery school educators, in weighing the interests at stake it is necessary to attend to the possible harm that could be caused to the people included in the labor exchange the fact that their data are brought to the attention of the municipal councilor for the exercise of their control functions.**

**Although the requested file is not available, it can be expected that it will contain, in addition to the identification data of the people who have participated in the process, their work curricula, the supporting documentation of the requirements required in the call, the assessment of the alleged merits and, eventually, of the results of the tests carried out.**

It should be borne in mind that article 21 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC) establishes the specific procedures that are affected by the obligation to advertise active regarding the calls for proposals and the results of the selective processes for the provision and promotion of personnel, and what is the specific information that must be published. Among them, letter d) of this article includes the "Procedures for the selection of temporary or temporary staff, including temporary staff exchanges".

Regarding the data to be published, article 21.2 establishes:

"The data to be published must refer, at least, to the announcement of the call, the bases, the official announcements and the name and surname and the four numbers of the national identity document or equivalent document of the persons admitted in each test or exercise of the process and of the person finally selected, in accordance with the criteria established in the field of data protection."

Once the process has ended, and since it is not known that the claimant is considered interested in the said selective procedure, for the purposes of controlling the municipal action it may be relevant to know certain information about the people who have finally been included in the labor exchange, but on the other hand, it would not be justified to have access to the information about the people who have been excluded, given that they have already had direct knowledge of their exclusion and have had the means to defend their rights .

Giving access to information about people who may be on the file but who have not finally been selected entails a particularly intrusive disclosure in terms of the right to data protection, given that the knowledge of their participation and, especially, of not passing the tests can have effects on your social, family and, especially, professional life.

On the other hand, although the councilors must be able to know the selected people, to the extent that they are not part of the bodies that must participate in the selection, it does not seem justified that they must access each and every one of the tests carried out or of the alleged merits. It should be taken into account, as an added element, that by the mere fact of being part of the job exchange, the people who are part of it do not gain access to a job, but would simply find themselves in a situation of expectation.

Taking these elements into account, it may be justified to know the applicants included in the job board, the assessment made of the selected applicants and, if applicable, their subsequent access to a workplace in the corporation as a result of being part of the stock market

Now, for the purpose of controlling the alleged municipal action, it does not seem justified that the councilor should have access to the personal CVs of all the candidates, nor other documentation attesting to the merits alleged by the participants, nor to the tests that they have been able to perform.

## VI

The object of the claim is also the publication of the minutes of the Governing Boards that were not published on the transparency portal.

From the point of view of the data protection regulations, it must be taken into account that, although the publication of the minutes of the Governing Boards is not an obligation expressly provided for in the LTC, the obligation to publish the decisions and actions with a special legal relevance, and any matter of public interest (article 8.1.c) im) of LTC). These forecasts have been developed by article 46 of the RLTC, which establishes:

"1. For the purposes of letters c) im) of article 8.1 of Law 19/2014, of 29 December, Government agreements of the Generalitat de Catalunya must be published.

2. For the purposes of letters c) im) of article 8.1 of Law 19/2014, of December 29, the minutes of the plenary sessions of the local administrations must be published in full, as well as the agreements taken in the sessions of the rest of the collegiate bodies of local administrations, and the date, number and type of the session to which it belongs, ordinary, extraordinary or urgent, must be indicated, with prior adoption of the appropriate measures to ensure compliance with the rules on personal data protection.

3. With regard to the minutes of the plenary sessions of the local entity, personal data may be included in the publication without the consent of the person concerned if it is data referring to minutes discussed in the full body of the corporation or provisions subject to publication in the corresponding official bulletin. In the rest of the cases, publication is only possible if the consent of the interested person is obtained or if the data cannot, under any circumstances, be linked to the interested person himself."

From the point of view of data protection regulations, it must be taken into account that this information must be published, if there is no consent of the interested parties or another legitimate basis provided for in article 6.1 RGPD, with the prior anonymization of the data of the interested persons (art. 10.3 LTC and 46.2 RLTC).

This anonymization does not affect the identification data of the people who have intervened in the Board of Governors in the exercise of their public functions and which may appear in the agreements that are made public. In this sense, article 70.6.a) of the RLTC establishes what is meant by anonymization for the purposes of the decree, in the following terms:

"a) anonymization: the elimination of the personal data of the natural persons affected contained in the information and any other information that may allow them to be identified directly or indirectly without disproportionate efforts, without prejudice to being able to maintain, where appropriate, the data merely identifying the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act."

Therefore, for the publication of the minutes of the Local Government Board on the municipal transparency portal, it will be necessary to anonymize the personal data of the people affected by the agreements that are made public, but not the identifying data of the elected officials or

of officials or other municipal employees, attending the session or in charge of processing that may be included.

## VI

Finally, it should be remembered that whenever the councilors' access to personal data is carried out due to the functions entrusted to them as such, they must be governed, apart from the duty of reservation imposed by the local regulations (article 164.6 TRLMRLC), by the principle of purpose limitation (article 5.1.b)) and by the principle of integrity and confidentiality (article 5.1.f)) established in the RGPD.

Thus, article 164.6 of the TRLMRLC provides that "the members of the corporation must respect the confidentiality of the information to which they have access by virtue of their position if the fact of publishing it could harm the interests of the local entity or third parties."

Likewise, in accordance with the principle of purpose limitation (Article 5.1.b) RGPD), any use of personal information after access by councilors should also be based on a legitimate purpose. Otherwise, we could be faced with a treatment not adjusted to the RGPD, even though the access to personal data was initially considered legitimate.

In addition, this purpose in which the subsequent processing of personal data by councilors could be framed should not be incompatible with that which at the time would have justified the access, that is the exercise of the legally attributed functions .

For its part, in accordance with the principle of integrity and confidentiality (Article 5.1.f)) RGPD "personal data will be treated in such a way as to guarantee an adequate security of personal data, including protection against non- authorized or illegal and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures."

### conclusion

Data protection regulations do not allow direct access of the complaining councilor to the town hall's entry register through the Gestiona electronic application.

The councilor's access to all the information in the register of unoccupied homes is not justified, without prejudice to the fact that he must be able to check the registration of specific homes in respect of which he may have indications that they should be registered in the register. In this case, the identification of the property could be done through the address of the property, without revealing any other information that may be contained there. This, without prejudice to the fact that you may also receive anonymized information about the set of properties registered in the register.

With respect to the file relating to the 2020 grants to entities, the data protection regulations do not prevent the councilor from being provided with the information relating to legal entities applying for the grants that may be included in the requested documentation. Instead, according to the

**principle of minimization, it would be necessary to limit the councilor's access to the data of the representatives of these entities that may appear in the file.**

**With regard to the file relating to aid to families and self-employed persons affected by the economic consequences of COVID-19, in the case of aid granted for reasons of social vulnerability, access to the files should be facilitated of subsidies by removing the information that allows the beneficiaries to be identified.**

**The data protection regulations do not prevent the councilor's access to the personal data contained in the file relating to the establishment of a job exchange for educators of the claimed nursery school relating to the announcement of the call, bases, name and surname of the person or persons finally selected, assessment obtained, order of those selected and, where appropriate, the award of a job. On the other hand, it will be necessary to limit access to the data of the non-selected persons, as well as to the personal CVs, other documentation certifying the merits alleged by the participants, or to the tests carried out by the selected persons.**

**The publication of the agreements of the Local Government Board on the municipal transparency portal must be done with the prior anonymization of the personal data of the people affected by the agreements that are made public, except for the identification data of the elected officials or of officials or other municipal employees who participated in the session.**

**Barcelona, May 10, 2021**