

IAI 30/2021

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against the denial by a bar association to the request for access to information affecting a member

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the refusal by a school of lawyers to the request for access to information that affects a member.

Having analyzed the request, which is accompanied by a copy of the file of the claim presented, in accordance with the report of the Legal Counsel, the following is reported.

Background

1. On March 22, 2021, an application addressed to a bar association is submitted, in which the applicant states that he was appointed an ex officio lawyer and that he should not have carried out no procedure for his defense, which is why he filed a complaint with the college, which was filed.

In relation to this, he urgently requests, in order to present in a court, "Know the disciplinary record of this lawyer. And also that it is not recorded that he tried to collect his minutes."

2. On March 24, 2021, the college denies access "[...]" since it does not certify any kind of consent of the affected person in order to provide the required information, nor the interest that the legally justified and there being no legal provision in any regulation, in the sense of your request [...]."

3. On March 24, 2021, the applicant submits to the GAIP a claim in which he reiterates his request and states that "Tratando de un abogado de oficio designado para mi defensa, no habiendo ejercido mi defensa, having dismissed the complaint, being prejudiced both by the collegiate and by [...], I understand that I am legitimate to ask for the information requested [...]."

4. On March 26, 2021, the GAIP will send the claim to the college, requesting a report that sets out the factual background and grounds its position in relation to the claim, as well as the complete file and, if applicable, specifying the third parties affected by the claimed access.

5. On April 15, 2021, the college sends GAIP a legal report in which it states that it denied the request for information, in summary, based on the following argument:

"[...] bearing in mind that the requested information would be part of one or more disciplinary procedures and, therefore, of a punitive nature, this Professional Association

considers that the most appropriate thing is to limit access, unless the request is accompanied by the express and written consent of the accused person (article 23, of the Transparency Law of Catalonia). And this is the circumstance that justifies the purpose of the email sent to Mr [...]”.

6. On April 19, 2021, the GAIP requests a report from this Authority, in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to the 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 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

The data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, apply to the treatments that are carried out on any information "on an identified or identifiable natural person ("the interested party »); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person".

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".

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment "is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

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

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 of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation".

The regulation and guarantee of public access to official documents held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), which recognizes people's right of access to public information, understood as such "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" (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to information is pronounced in similar terms

public and good governance (hereinafter, LT), in its articles 12 (right of access to public information) and 13 (public information).

In the case at hand, as can be seen from the documentation included in the file sent, the claimant requests access to the disciplinary history of the lawyer who was appointed ex officio for his defense legal and, in addition, to know whether he would have processed the collection of his fees before the college. Given the information to which you intend to access, it can be concluded that it must be considered public information for the purposes of article 2.b) of the LTC, and subject to the right of access (article 18 of the LTC), being documentation in their power as a result of their powers.

However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data.

III

The claimant has requested the college "Know the disciplinary record of this lawyer. And also that it is not recorded that he tried to collect his minutes."

With regard to the first of the issues claimed, that is, knowing the disciplinary history of the member, it must be taken into account that Law 7/2006, of May 31, on the exercise of qualified professions and of the professional associations, which aims to regulate the exercise of qualified professions in the territorial area of Catalonia, among others, with the professional associations (art. 1), recognizes these disciplinary powers with respect to their colleagues members (art. 15, in relation to article 26.b) as well as the regulatory power to develop the disciplinary regime provided for in the law itself (art. 20 and 42). In their capacity as corporations under public law and in the scope of their public functions, the colleges must act in accordance with administrative law and exercise the powers inherent in the public administration (art. 66).

In the professional field of law, it is necessary to take into account Resolution JUS/110/2019, of 22 January, amending the Regulations of the Catalan Bar of the Council of Illustrious Bar Associations of Catalonia (henceforth, NAC), which provides for the disciplinary regime from articles 60 and following.

Bearing in mind that we are dealing with possible disciplinary sanctions imposed in the exercise of public functions attributed to professional associations, we are dealing with information relating to administrative offences, in this case of a disciplinary nature.

For this reason, reference must be made to article 23 of the LTC which, for certain categories of data, provides 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 sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a warning

public to the infringer, unless the affected party expressly consents by means of a written document that must accompany the request."

In relation to consent, article 70.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC), provides that "it corresponds to the person requesting to provide the express and written consent of the persons holding the personal data affected by the requested access. The public administrations can transfer the request and the consent to the person holding the data in order to certify the written consent provided, in case of doubt about its veracity.

Given what has been stated, to the extent that knowing the professional's disciplinary history involves knowing information related to the commission of administrative infractions, and it is not constant in the file sent that the claimant has the professional's express and written consent affected, access to this information must be denied.

IV

In relation to the request to know whether the lawyer appointed ex officio would have processed the payment of fees, it will be necessary to comply with the provisions of article 24.2 of the LTC, which provides the follow

"If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. To carry out this weighting, the following circumstances must be taken into account, among others:

a) The elapsed time. b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people.

"

In accordance with this article, the possibility of knowing whether the lawyer appointed ex officio for his legal assistance has processed the payment of the fees through the college must go through a prior reasoned weighting between the public interest in the disclosure and the right of the people affected. In this weighting it is necessary to take into account all the circumstances that affect each specific case with the aim of determining whether the claimant's right of access or the data protection right of the affected persons should prevail, taking as based on the different elements listed in the aforementioned article.

According to article 24.2.b) of the LTC, one of the circumstances that must be taken into account is the purpose of the access. In this sense, although article 18.2 of the LTC provides that the exercise of the right of access is not conditional on the concurrence of a personal interest, and does not remain subject to motivation or require the invocation of any rule, knowing the motivation for which the person making the claim wants to obtain the information can be a relevant element to take into account.

In the particular case, based on the information contained in the file sent, the claimant states that the purpose of obtaining this information is the will to present it before the courts. This

is an element that must be taken into account in the weighting required by article 24.2, since to the extent that it has maintained a legal relationship with the lawyer, the data relating to whether the association has processed the collection of fees on the part of the lawyer it can be a relevant element when taking the actions that may correspond to him in the case of disagreement with the performance of the member who assisted him. In short, it is understood that the purpose of the access would be to undertake the legal actions it considers pertinent in the defence

On the other hand, from the point of view of the transparency regulations, it should be taken into account that the purpose it pursues is "to establish a system of relations between people and the public administration and the other obliged subjects, based on the knowledge of public activity, encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management" (Article 1.2 LTC), or in other words, to establish the possibility of offering tools to citizens to control the performance of public authorities.

For this purpose, and in accordance with the provisions of Law 1/1996, of January 10, on free legal assistance, reference must be made to the collegial regulations [...] which refers to the fact that matters assigned in the official shift by the college are remunerated at the expense of the budgets of the Generalitat. For this purpose, the association itself provides lawyers with a form on which they must note the various proceedings that take place, and which must deliver them to the association within one month from intervention, diligence or date of notification of the respective judicial resolution, accompanying the supporting documentation of the acti

In accordance with the provisions of the collegial regulations [...], the ex officio appointed lawyer may only receive fees from the citizen to whom legal assistance has been appointed in those cases that have been refused the right to free justice - in which he must inform the Commission of the Shift of Office of his perception and to return the amounts received at the expense of the budgets of the Generalitat de Catalunya once the client's fees have been received - or in those cases in which the citizen has requested directly or through judicial office, an official lawyer expressly indicating his wish not to process a file for the recognition of the right to free justice.

To the relevance that it may have from the point of view of the transparency regulations to know the information relating to the economic management of the office shift service, to the extent that it is remunerated from public funds, which entails the control of decisions or actions derived from the procedures provided for in the collegial regulations [...], it should be added that in the case at hand it could also be relevant to know this information in order to take legal action, given that the claimant expresses his disagreement with the action of the lawyer appointed ex officio, and the presumed tolerance on the part of the college, facts that would justify

From the point of view of the right to data protection of the lawyer affected by the access request, the information relating to the payment, or not, of the fees derived from the provision of the service in the official shift is information linked mainly to their professional sphere which would reveal occupational and economic data. However, in the case at hand, although it could be obvious that knowing this information could also affect your privacy, there are no a priori elements that can be considered to be the interference that occurs in the right to the protection of his personal data must prevail over the interest of the claimant to know this information, especially because the amount that he should receive in principle is a

amount previously established with a general character for all interventions in the official shift that benefit from free legal assistance and that only refers to the remuneration received in a specific case.

In short, in accordance with what has been stated, it is considered that in the case at hand the claimant's right of access to know whether the lawyer appointed ex officio has processed the payment of the fees before the school, with public funds.

conclusion

Data protection regulations do not allow access to a member's disciplinary history, given that data relating to the commission of administrative offenses would be affected. However, in the case at hand it would be justified to inform the claimant if the college has processed the payment of the fees for the provision of the service in the official shift.

Barcelona, May 7, 2021

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