

IAI 36/2021

**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 a City Council's denial of a councilor's request for access to a grant file for school supplies**

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 a City Council's denial of the request for access to an administrative file by a councillor.

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

#### Background

1. On April 27, 2021, a request is presented to a City Council, in which a councilor, spokesperson for a municipal group, requests access to an administrative file in order to carry out his duties .

Although the nature of the file requested is not clear from the request, according to what is clear from the City Council's resolution, the file would be related to the request for aid for 2020 school supplies.

2. On April 29, 2021, the City Council notifies the councilor of the denial of his request on the understanding that, although the councilor has the right to obtain from the mayor the background, data or information held by the services of the corporation and are necessary for the performance of its function, access to the file may violate the constitutional right to honor, personal or family privacy or one's own image, since it would mean knowing special categories of data of the Article 9 of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/CE, as well as may affect the rights of minors.

3. On May 10, 2021, the councilor presents a claim to the GAIP in which he states that the City Council, although it has responded to his request, has not delivered the information.

4. On May 13, 2021, the GAIP will send the claim to the City Council, asking for a report setting out the factual background and the basis for 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 May 20, 2021, the City Council sends a legal report to the GAIP in which it states that it rejected access to the file "[...]" given that it is an administrative procedure in the which a user of Social Services requests help due to personal circumstances of special sensitivity, given that any knowledge or dissemination of information may violate the constitutional right to honor, personal or family privacy or self-image ".

6. On May 21, 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 information public and good government.

## 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).

For its part, the first additional provision of the LTC, in the second section, provides that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, with supplementary character, by this law".

In the case at hand, the claimant holds the status of a councillor, acting on behalf of a municipal group, which means that the provisions established by the local regime legislation, fundamentally, Law 7/ 1985, of April 2, regulating the bases of the local regime (LRBRL) and Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal and Local Government Law of Catalonia (TRLMRLC), regarding councillors' access to municipal information.

This without prejudice to the fact that the complaining councillor must be granted at least the same guarantees in terms of access to information - including the possibility of lodging a claim with the GAIP - as the rest of the citizens who do not have this condition of elected position, given the supplementary application of the LTC (DA1a. section 2).

### III

At the outset, it should be noted that this Authority has previously had the opportunity to analyze the councillors' right of access to the information available to their corporation, necessary for the exercise of the functions that correspond to them (among others, in the opinions CNS 10/2017, CNS 29/2018 or CNS 2/2021 as well as in the reports IAI 48/2019, IAI 52/2019 or IAI 27/2021 available on the website <https://apdcat.gencat.cat>).

Thus, in accordance with the provisions of article 77.1 of the LRBRL, all members of local corporations have the right to obtain from the mayor or president or from the government commission all the background, data or information that is in power of the corporation's services and are necessary for the development of its function.

For its part, article 164 of the TRLMRLC provides for the following:

"164.1 All members of local corporations have the right to obtain from the mayor or mayoress or the president, or from the governing commission, all the background, data or information that is in the possession of the corporation's services and are necessary for the development of their function.

164.2 Corporation services must provide information directly to corporation members when:

a) 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.

164.3 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 decision 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 image. b) When it comes to matters affected by the general legislation on official secrets or summary secrecy.

[...]

164.6 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 may harm the interests of the local entity or third parties."

In the same sense, the Municipal Organic Regulation of the City Council, published in the BOPB on [...], regulates the right to information of municipal councilors in article 65 (section 1.d), section 2 and 3 ). At the same time, it also recognizes this right for municipal groups in article 61.1.b), which states that they have the right to "obtain from the Mayor all the records: the data, information and copies that are in the possession of the municipal services and are necessary for the development of their function".

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and that are necessary to exercise their functions, in accordance with repeated jurisprudence on this issue (STS 27 of June 1988, 27 of September 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 the 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 , which have the services of the City Council, for their control task and to document themselves for the purposes of adopting decisions in the future (among others, STS of March 29, 2006). In relation to this, the STS of June 27, 1998 already stated that "[...] To be able to carry out this supervisory and controlling function, it is necessary to know beforehand the data and background that are needed for this purpose, which implies the need to have access to all the data, antecedents and information [...] to then select those that can be useful in the fulfillment of the function entrusted to the councilors [...]"

In the same way, it should be noted that the local regime legislation does not require councilors to explain or substantiate the purpose of their request, in order to access municipal information,

given that the reason for their request must be understood as implicit in the exercise of their duties that correspond to them as councilors (among others, STS of November 5, 1999).

However, it should be borne in mind that the regulations set out provide that although the right of access of the members of the local corporations operates on all the background, data and information that are in the possession of the services of the corporation, these must be necessary for to the development of its function. Therefore, it is relevant to consider whether the information you seek to access is necessary for the performance of your functions.

On the other hand, it should also be borne in mind that the councilors' right to information is not an absolute right. For this reason, if it conflicts with other rights, it is necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

This has come to be recognized by the local regime legislation itself. The aforementioned article 164 of the TRLMRLC, in regulating the conditions for the exercise of the right of access to municipal information by the members of the corporations (sections 2 and 3), establishes, as a possible basis for denying the request with reasons "information, that "the knowledge or dissemination of the information could violate the constitutional right to honor, personal or family privacy or one's own image" (section 3, letter a), but obviously access could also be denied- se when other fundamental rights may be affected such as the right to the protection of personal

In the case at hand, the City Council alleges that the councilor's request for access may violate the constitutional right to honor, personal or family privacy or one's image considering that the administrative file in the which the councilor intends to access contains particularly sensitive data

But in addition, given that the exercise of the councilor's right of access could lead to a limitation of the fundamental right to the protection of personal data, it will be necessary to determine whether it is a proportional limitation, given that, according to repeated doctrine of Constitutional Court, the limitation of fundamental rights can only occur proportionately (SSTC 11/1981, 57/1994, 66/1995, 11/2006, 206/2007, among others).

It is therefore necessary to examine the circumstances in the particular case taking into account the intended purpose, whether this information is necessary to achieve said purpose, the possible people affected and whether it requires special protection.

#### IV

The councilor has requested from the City Council access to an administrative file with the aim of being able to exercise the functions that the regulations attribute to him as an elected member. In particular it refers to the control over the performance of the local corporation. In the case we are dealing with, it is unknown whether or not the applicant participated in the call to which the administrative file to which access is sought corresponds and whether the aid was granted or not, but in any case no particular interest is alleged that goes beyond the public interest in councilors having the necessary information to carry out their duties.

It should also be noted that the specific content of the file is unknown, beyond the fact that it is related to the granting of grants for school materials in 2020.

In accordance with the provisions of article 70 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), the administrative files constitute "[...] the ordered set of documents and actions that serve as a precedent and foundation for the administrative resolution, as well as the proceedings aimed at executing it" (paragraph one), excluding information that has an auxiliary or supporting nature, such as notes, drafts, opinions, internal reports, etc. (third section).

On the other hand, to the extent that the administrative file to which access is sought is related to the request for an aid for school materials in the year 2020, it seems that it would be a file related to the call of Social Aid of an economic nature 2020 – School material, registered in the National Database of Subsidies. The extract can be consulted through the following link [...].

The object of that call was the granting of social benefits of an economic nature for school materials to people in situations of special social need or emergency for the attention of situations of state or risk of social exclusion, for the year 2020. In relation to the recipients, the extract provides that "any person and/or family unit living together who are in a situation of socio-economic difficulty or at risk of exclusion may be beneficiaries of the financial benefits social and that with its granting it is possible to contain or avoid the worsening of the lack situation [...]."

And with regard to the documentation and requirements to receive the aid, the extract of the call foresees the following:

"[...] In order to certify compliance with the required requirements and provide the necessary information to apply the criteria for awarding and scaling the amounts of benefits, the application must be accompanied by [...] .]:

a) Request for the benefit, according to the standardized model, duly completed. b) Identification document of the applicant. c) Documentation attesting to the financial situation of the cohabiting family unit:

c1. Any legal proof of the total income of all members of the cohabiting family unit corresponding to the months determined for each type of aid. c2. If you do not have the supporting documents, you will need to provide a sworn statement of the family unit's income. c3. Responsible declaration stating:

- That he has not received financial benefits for the same purpose from another body, public or private. Otherwise, you must indicate the ones you have requested and the amount of the receipts.
- That he has proceeded to the justification of the financial benefits included in the Municipal Regulation of social benefits of an economic nature and granted by this City Council and, otherwise, indicate the aid pending to be justified and the cause that motivates it.
- That he does not own movable or immovable property, other than the usual home, over which he has a right of ownership, possession, usufruct or any other that, due to its characteristics, valuation, possibility of exploitation or sale, indicates the 'existence of means

sufficient to meet the need for which the benefit is requested. Otherwise, indicate which ones.

c4. Any other documentation that may be required for the correct assessment of the application during its processing, if deemed appropriate by the reference technical staff of the basic social care teams [...]"

Based on what has been explained, in principle the administrative file on which the councilor has requested access will contain, at least, the identification data of the applicant, those relating to the economic situation of the unit cohabitation family and, where applicable, referring to other financial benefits received, or movable or immovable property, other than the usual home, that could justify the existence of sufficient means to attend to the need for which the application is being made provision, in the terms provided for in the

On the other hand, to the extent that the extract of the call also foresees the need to accompany the application with a responsible declaration stating that the justification of other financial benefits granted by the City Council has been carried out or, otherwise, indicate the aid pending to be justified and the cause that motivates it, it cannot be ruled out that it may also contain special categories of data from Article 9 of the RGPD, such as data relating to health in the case of benefits linked to the state of health (for example, if it were an economic benefit linked to a dependency situation that affects you, or that affects a member of the family unit). However, and despite the City Council's statements in this regard, it does not seem that there should be any other information that could affect the right to honor and one's image, or other aspects of privacy.

At the same time, it seems likely that, among the documentation in the file, there is also information that affects minors, taking into account the purpose of the aid. For this purpose, reference must be made to the specific protection regime for minors to which the data protection regulations refer in recitals 38 and 58 of the RGPD, given their consideration as a vulnerable group in recital 75.

In summary, the administrative file to which the councilor intends to access, according to the information analyzed, it seems that it will contain at least the identification data of the applicant for the aid for school materials, those relating to the economic situation of the family unit of coexistence and, where appropriate, referring to other financial benefits received, or movable or immovable property, other than the usual home, that could justify the existence of sufficient means to attend to the need for which it is used bid for the provision, in the terms provided for in the extract of the call, as well as data relating to minors and, wh

In relation to the special categories of data, which must be granted special protection, it should be borne in mind that the councilor does not state any specific reason that can justify the relevance of this information, for this reason it should be avoided in in any case the access to this data. Access to this information is not relevant for the purpose pursued and would also lead to a strong intrusion into the right to data protection of the affected persons.

It is relevant, in this sense, the fact that the councilor, in accordance with what is stated in the claim formulated, states that he has no interest in this type of information: "[...] If the file contains sensitive data of personal nature, it is the City Council that must screen them, but it is no



denial", that is to say, it can be deduced that it would be considered appropriate for the City Council to have granted access without this information.

In relation to the rest of the information that the administrative file may contain, the information relating to the economic and patrimonial situation of the cohabiting family unit and, where appropriate, on other financial benefits received, is information that by itself, and especially in the case we are dealing with in which it relates to a request for aid for school supplies, it may allow to deduce the concurrence of certain qualified circumstances that may reveal being going through socio-economic difficulties or being at risk of social exclusion.

It is clear that the disclosure of this information can lead to a significant interference in the rights to the protection of personal data of the persons affected, to the extent that the fact of revealing the existence of a situation of special need (situation of socio-economic difficulty or at risk of social exclusion), can affect different levels of their personal or intimate spheres or the social. This is clear from the extract of the call: "any person and/or family unit living together who are in a situation of socio-economic difficulty or at risk of social exclusion can be beneficiaries of the financial benefits".

On the other hand, it is also appropriate to take into account the fact of the possible expectation of the person requesting aid for school materials that their identity, or that of the members of the cohabiting family unit, will not be disclosed to third parties .

To this end, although the LTC provides in article 15 for the publication of certain information on subsidies and public aid granted, it is important to bear in mind that in the final part of section 1.c) it also provides that " in the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved".

From the perspective of the councilor's right to information, it may be relevant for the purpose of monitoring the performance of the local corporation to know certain information about the aid granted to the extent that it may form part of the background necessary for the control of municipal social policies. But this should not necessarily translate into knowledge of the specific aid granted to each person for reasons of social vulnerability or full access to the entire content of the file, where there is information not only about the aid granted but also on the supporting documentation of compliance with the requirements set out above.

The supervisory and control function on the performance of the local corporation referred to by the applicant councilor could be exercised without the need to know the identifying data, or that make the person requesting the aid identifiable for school supplies and the rest of the members of the family unit of coexistence, mainly because the objective of the local regime regulations is to provide the elected members with the instruments necessary to exercise their functions for the control of the performance of the local corporation , and not for the control over the physical persons related to it.

This Authority has considered in other consultations that the data protection regulations would not prevent a councilor from being provided with information about the set of grants granted by the local corporation to certain natural persons, as long as it cannot be deduced from this information that the reason of the granting of the aid obeys a situation of social vulnerability or that entails the

disclosure of special categories of data. In the case at hand, however, given that information is requested only about an aid granted for reasons of social vulnerability (and not only about the granting or not of the aid but a copy of the entire file is requested), provide the 'access requested would inevitably reveal the existence of these circumstances.

For this reason, in the case at hand it would be necessary to anonymize or pseudonymize the requested information, so that the affected people cannot be identified.

Reference must be made to Recital 26 of the RGD by which "[...] to determine whether a natural person is identifiable, all means, such as singularization, that can reasonably be used by the person responsible for the treatment or any other person to identify directly or indirectly the natural person. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment like technological advances [...]"

On the other hand, article 4.5 RGD defines pseudonymization as "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears separately and is subject to technical measures and organizational measures intended to ensure that personal data are not attributed to an identified or identifiable natural person".

It should be noted that in addition to the identifying data relating to the applicant, or the members of the cohabiting family unit, such as first and last name, postal or electronic address, telephone number, national identity document number or equivalent document, signature, etc., the file may contain other information - not only in the documentation prepared by the City Council but also in that provided by the affected person -, such as that relating to the place of birth, nationality, school stage or educational center of the minor, number of siblings, etc. which may end up making the affected person identifiable, especially depending on the size of the municipality in question.

For this reason, in the event that this anonymization task is not possible or is very complex, from the point of view of the right to data protection it could be advisable to deliver an anonymized or pseudonymized report, which provides information only on the amounts and the reason for the aid.

## conclusion

In view of the data protection regulations, and in consideration of the concurring circumstances, it would be proportionate to grant the councilor access to the administrative file relating to the request for aid for school supplies in the year 2020 as long as the information is anonymized or pseudonymized so that the person requesting the aid or the members of the family unit cannot be identified.

Barcelona, June 7, 2021