

IAI 37/2021

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 presented by a citizen against a City Council for the denial of access to information on the budget line for Training and improvement of City Council staff during 2020

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the Complaint presented by a citizen against the City Council, for the denial of the 'access to information on the budget line for Training and improvement of the City Council's staff during 2020. Specifically, the applicant asks to know the name, concept of training and amount.

After analyzing the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the report of the Legal Counsel, the following report is issued:

Background

1. On February 23, 2021, a citizen submits a letter to the City Council, in which she requests the following information:

"Regarding the budget item: (...) "Training and improvement of personnel" with an allocation of €14,000 for the year 2020. I want to know: The total expenses attributed to this item in 2020. Specifically: Name and surname of public workers, concept of training for which they have received compensation and amount."

2. The file contains the response letter from the City Council, dated March 25, 2021, addressed to the applicant, according to which the City Council "gives access to the file with the requested data ".

3. On March 25, 2021, the applicant who, according to the available information, would be a City Council employee, submits a claim to the GAIP, given that he considers that the City Council has not provided him with the required information of in full, and reiterates that he wants to know information about "the budget line for Training and improvement of City Council staff during 2020. Specifically, name, concept of training and amount."

4. On March 26, 2021, the GAIP communicates to the City Council the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to public information , and the identification of the third parties affected, if any.

5. The file contains a letter that the claimant addressed to the GAIP on March 28, 2021, in which she states, in summary, that the information that the City Council would have given her does not allow her to know the information that she tender, since in many cases, according to the claimant, the name of the person who received the training does not appear. On March 29, 2021, the GAIP sent a copy of this letter to the City Council.

6. The file contains a copy of the City Council's report, dated April 26, 2021, in which the City Council states that it would have already provided the information requested to the claimant, except for the identity of the three workers (out of a total of 106 affected workers), who according to the report would have expressed their refusal to communicate their identity to the claimant. Likewise, the file contains a copy of the certificate of the Accidental Secretary of the City Council, dated April 26, 2021, which details the documentation that would have been given to the claimant and its content.

7. The GAIP requests the City Council, on April 29, 2021, for the contact details of the three people who, according to the City Council, would have opposed access during the sun phase information request. The file contains a copy of the letters of communication from the GAIP to the three affected persons, dated May 11, 2021, informing them of the claim submitted. On the same date, the GAIP informs the City Council and the person making the claim of the communications made to the three affected people. It is not recorded in the file that these people have submitted a written response.

8. On May 27, 2021, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must issue a report to the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected (Article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereafter, RGPD).

Therefore, any other limit or aspect that does not affect the personal data contained in the requested information is outside the scope of this report, as would be the case of the limit established in article 21.1.b) of the LTC, relating to the investigation or sanction of criminal, administrative or disciplinary infractions, the application of which could lead to the claimant's right of access being denied or restricted for the purposes of protecting the investigation .

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

In relation to the information that the claimant requests from the City Council, according to the file, the City Council would have provided (March 26, 2021) two lists with information to the claimant. Specifically, a list containing the file number, the budget application, the amount and the title or description of the course. In some cases this list specifies, along with the title, the name of the person who would have taken the course; in other cases no name is added, or only the title of the course in question is mentioned with a reference to the total number of students who would have taken the course. The other list that, according to the file, the City Council would have provided to the claimant, refers separately to the training of "labour personnel" and "official personnel", and includes, in some cases, the name and surname of the worker who would have received the training course and the amount; in other cases no name is indicated, but only the group that would have taken the course is indicated (among others, "town hall staff", "nursery staff", or "local police staff (agents)".)

In the claim submitted to the GAIP on March 25, apart from making considerations relating to the notification that the City Council would have made to the affected people, which the claimant considers irregular, the claimant states that:

"The documentation that has been given to me does not provide all the required information. The exported document from the SicalWin accounting program does not present the correct columns requested from Third Party / Free Text which are easily exportable columns. The documents are in PDF and I cannot work with them. They have presented a follow-up document prepared, I imagine by the administration of the service that has no reliability, as it is easily manipulated.

(...)."

In the message of March 28, 2021, which the claimant addresses to the GAIP, she insists that: "as you will see in the documents that I am attaching again, revised, the data do not add up. In many cases, the name of the person who received the training does not appear in the Third Party / Explanation column. (...)."

The City Council's report, dated April 26, explains that it provided the claimant with the following information:

"1. Accounting document for operations of the expenditure budget for the item requested during the 2020 financial year. This document contains a field with the amount of the expenditure and a field with the formation and name of the third party, which sometimes does not contain all information

2. Due to this deficiency in the accounting document, an internal document used as a control system by the service was also provided, with the list of workers, training and amount. The only limitation of access has been to anonymize the names of the three people who formally submitted allegations to the access. The information that refers to the training provided and its cost has remained in the data provided."

Given the claim in these terms, for the purposes of this report it is necessary to start from the basis that the data relating to natural persons, in particular, the name and surnames of the workers and officials of the City Council who have taken the subject training courses of the claim, constitute personal data and its treatment (art. 4.2 RGD), is subject to the principles and guarantees of the RGD.

Law 19/2014 of December 29, on transparency, access to public information and good governance (LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC establishes that "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 person" (section 1). The aforementioned article 2.b) LTC defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other subjects obliged in accordance with what establishes this law".

State Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The information relating to the training and, where appropriate, the training grants received by the City Council workers, the subject of the claim, is "public information" for the purposes of article 2.b) of the LTC, subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (Article 20 et seq. LTC), as is the case with the limits of articles 23 and 24 of the LTC with regard to personal data.

III

At the outset, the claimant asks to know "The total expenses attributed to this item in 2020" (information that would not involve providing personal data of the workers). This information should not contain personal data, therefore, from the perspective of data protection regulations, there would be no inconvenience in handing it over.

Apart from this, the claimant asks to know: "Name and surname of the public workers, concept of training for which they have received compensation and amount."

The requested information does not in principle refer to particularly protected data, that is, relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and the commission of 'criminal or administrative offenses that do not entail a public warning to the offender, on which access should be limited, in accordance with the provisions of article 23 LTC.

Therefore, it will be necessary to apply article 24 of the LTC, which establishes the following:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights.

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the people affected. To carry out this weighting, the following circumstances must be taken into account, among others: a) The elapsed time. b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people.

3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the data protection legislation staff."

The claimant requests to know the identity of the workers, the training concept for which they have received compensation, and the amount of the courses, with reference to the year 2020.

Given the information available, it must be considered that the information requested by the person making the claim could refer both to courses organized by the City Council itself, as well as courses organized by third parties and in which the City Council has granted some type of financial aid to attend -hi (as can be seen from the expression "compensation" used by the claimant), that the participating workers could have received.

It should be borne in mind that the purpose of access is one of the circumstances established for said weighting (art. 24.2.b) LTC).

Although the transparency legislation does not require the applicant to state the reasons justifying the exercise of the right of access to public information (art. 18.2 LTC), the purpose of the access is an element in take into account when assessing the different rights and interests at stake.

According to the information available, the claimant does not explain the reason for his request. From the City Council's report, dated April 26, 2021, it follows that the claimant is a City Council employee.

It should be borne in mind that the purpose of the Transparency Law is, as can be seen from article 1.2 LTC, to establish a system of relationship between people and the Public Administration and other obliged subjects, based on the knowledge of the public activity, encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management. Thus, the transparency legislation provides citizens with the ability to control public funds, and to monitor the use of public money, as set out in the Preamble of the LTC.

Taking into account that the training that a public administration offers to its workers involves an economic expenditure that is specified in the corresponding budget item, it is clear that the information on this expenditure by the relevant Administration can be of public interest for citizens (art. 24.2 LTC).

In this sense, the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee (TRLEBEP) recognizes the right of civil servants to training continuous and permanent updating of their professional knowledge and abilities, preferably during working hours (art. 14.g) TRLEBEP), and article 16.2 of the same rule provides that: "The professional career is the ordered set of opportunities for promotion and expectations of professional progress according to the principles of equality, merit and capacity. To this end, the Public Administrations will promote the updating and improvement of the professional qualification of their career officials."

With regard to the workforce, the Workers' Statute (Royal Legislative Decree 5/2015, of October 30, ET), provides for the right of workers: "To the promotion and professional training in work, including that aimed at its adaptation to the changes made in the workplace, as well as to the development of training plans and actions tending to favor its greater employability." (art. 4.2.b) ET).

Given these regulatory provisions, it is clear that Public Administrations have the duty to promote training that favors the professional advancement of their workers, and that they have the right to receive this training.

With this objective, each public administration can offer its workers the completion of training courses (either organized by the administration itself, or external courses organized by third parties), which it considers appropriate to meet this objective.

In any case, the Administration has a wide margin of discretion, both in the design of the training it offers to its workers, and when it comes to selecting, prioritizing and authorizing which workers will carry out a specific training activity. In this sense, the Administration can take into account different factors (the profiles, levels or professional groups to which the workers belong, seniority or level of responsibility, the functions and tasks carried out, the interests or requests of the workers, the number of places available for training, etc.), which will usually lead to a discretionary decision regarding the workers who will be able to take a given course.

From the perspective of the purpose and objectives of the transparency legislation (art. 1.2 LTC), access by citizens to information that allows them to know the decisions of the Administration

public, is particularly relevant in those cases where the Administration has a greater margin of discretion in making these decisions.

In the case at hand, knowing which courses the City Council has offered in a specific period (2020), and the identity (name and surname) of the workers who have been selected to take each course, contributes to the retention of accounts in this matter by the Administration, which ultimately is the objective of the transparency legislation.

That said, also for weighting purposes, it should also be borne in mind that, on occasion, providing complete or at least fairly detailed information about a person's academic and professional training or academic curriculum can give a profile about this person. However, this would not be the case we are dealing with, since the claimant is not requesting access to the academic or curricular information of the workers, but only information on the courses that the municipal workers would have taken in a limited period of one year. It does not appear that this information, in the terms requested, allows deducing a detailed academic or professional profile of these workers.

But in addition, it is also necessary to take into account the provisions regarding active advertising contained in the LTC. And this both for the courses organized by the City Council itself, and for the courses for the assistance of which it has granted some type of aid.

With regard to the courses organized by the City Council, at the outset, it should be borne in mind that in terms of transparency in the organization and administrative structure, article 9.1.g) of the LTC obliges the administrations to publish "the lists that are eventually created to access the training and promotion processes." According to this precept, the list of people registered to participate in a training process should be information available on the transparency portal.

In this sense, article 22 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereafter RLTC), provides that:

- "1. For the purposes of letter g) of article 9.1 of Law 19/2014, of December 29, lists that may be created to access the training and promotion processes are understood to be lists that contain personnel in the service of public administrations admitted to non-mandatory training activities directly related to internal, economic or professional promotion, organized by each of the public administrations.
2. For these purposes, the lists must publish the data relating to the identification of the names and surnames of the persons admitted, the workplace they occupy and the organic unit in which they are integrated, the unit that manages the activity and a description of the training activity, which must include its code, year and start and end dates.
3. The information must be published on the Transparency Portal of Catalonia on the start date of the training activity, and must remain there for a period of two months from the end date of the activity training."

According to the information available, the City Council would have already given the claimant the list of training courses and the corresponding amounts, and in relation to some of these courses, the first and last names of the City Council employees who have taken the courses would be missing .

However, in view of the available information, the City Council would have indicated in some cases only the total number of participants in the course, and in other cases only the group to which the training is directed, without specifying the identity of the recipients (for example, indicating as recipients of the course, the teachers of a nursery school).

Taking into account the obligation of active publicity regarding the training provided by each public administration for its workers (in this case, the City Council), which includes the information requested by the claimant, it is clear that from the perspective of the right to data protection, there would be no inconvenience in providing the information requested by the claimant regarding the year 2020, in the terms requested (name and surname of the workers who have followed the courses, course or "concept training" and the corresponding amount, if available

In line with these considerations, in relation to the training courses organized by third parties, to which the City Council has authorized its workers to attend during the period referred to by the claimant (year 2020) and has granted some financial aid, it is necessary to take into account an added element, given that in terms of transparency in subsidy activity, article 15.1.c) of the LTC, also obliges administrations to publish information relating to "subsidies and public aid granted, with the indication of the amount, the object and the beneficiaries".

For the purposes of what is provided for in article 15 LTC, article 45.2 of the RLTC specifies that the fulfillment of the duty to publish the information relating to grants and aid granted, mentioned, "is effective, for the subjects who they are obliged, by sending this information to the Registry of subsidies and aid of Catalonia, which must be accessible from the Catalonia Transparency Portal." And it specifies that "the Transparency Portal of Catalonia must provide access, through a link to the Register of Subsidies and Aids of Catalonia, to the regulations governing the subsidy or aid, to its regulatory bases, to the resolution approving the call, to its possible modifications, and to the information on the amount, the object and the beneficiaries of the subsidies and public aid granted with advertising and competitive competition or without."

In this sense, the expectations of privacy that workers may have regarding their participation in the training programs offered by the City Council to its employees or in which they participate with financial aid from the City Council, are conditioned by advertising from his identity to affections of transparency.

Therefore, given these forecasts, and taking into account the considerations made in relation to the training organized by the City Council itself, it would seem justified also with regard to the training external to the City Council (organized by third parties), to give the claimant the information detailed information on the identity of the beneficiary or beneficiaries of the aid (the City Council employees who attend the training courses), the amount of the aid and the object (name and characteristics of the course).

However, it should be mentioned that one of the training courses listed in the file was given to "local police personnel (agents)".

It should be taken into account that, in the particular case of local police personnel, the sectoral regulations applicable to the security forces provide that they are identified with a professional identity card (TIP) in place of their first and last names, for security reasons.

Specifically, Law 4/2003, of April 7, on the organization of the public security system of Catalonia, provides in article 25 ter that "All members of local police forces must carry a document of professional accreditation." (...) "This document must include, at least, the municipality of affiliation, the identification of the professional category and the individual registration number. (...)."

Considering that the identification of the local police is done through the TIP number, the information should be provided using this identification code instead of the first and last names of the officers who, if applicable, have completed the training course in question. This measure, less intrusive on the privacy of the affected persons, would be more appropriate to the principle of data minimization (art. 5.1.c) RGPD). It is obvious that the TIP identifies, or makes the holder identifiable, especially in this case where a person who, according to the available information, is an employee of the City Council, would access the information, but to the extent that this is the mechanism of identification provided for by the regulations for security reasons, should also in this case be the form of identification chosen to

All this, without prejudice to the fact that certain personal circumstances of the three people who, according to the City Council, would have opposed the communication of their information, could justify the limitation of the claimant's right of access to their identity people Although it is stated in the file that the provisions of article 31 of the LTC have been complied with, apart from the fact that they have objected (which alone does not necessarily entail the denial of access) it is not known at the time of issuing this report that they have alleged any element that could justify the limitation of the right of access.

conclusion

The regulations for the protection of personal data do not prevent access by the claimant to the information relating to "the budget line for Training and improvement of the City Council's staff during 2020. Specifically, name, concept of training and amount", both in relation to training courses organized by the City Council, and in relation to courses organized by third parties

In the case of members of the local police who have completed training courses, they should be identified by means of the identification number (TIP).

Barcelona, June 17, 2021