

IAI 47/2021

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 for a City Council's lack of response to the request for access to certain information relating to major works licenses and environmental licenses

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 in relation to the lack of response of a City Council to the request for access to certain information related to major works licenses and environmental licenses.

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 May 5, 2021, a person submits an application to the City Council in which he requests the following:

"List of all requests for major works licenses and environmental licenses requested from the City Council [...] from 5 years ago to the present, regardless of the type of action (demolition, construction, new plant, new homes, etc.) or the type of activity, and the processing status (in process or archived). The list should contain the following metadata: No. file, Street and no. street of the work or where the activity is to be carried out, Date of license application, Type of action or activity, Holder, Status of processing, Type of resolution (granted, denied, expired, suspended, etc.). Resolution date. The data or metadata should be presented in electronic format and as reusable data (e.g. spreadsheet)".

2. On June 17, 2021, the applicant submits a claim to the GAIP in which he states that the City Council has not responded to his request, nor has he provided the information. For this reason, he reiterates the terms of the access request and claims that the requested documentation should be on the transparency portal "[...] because otherwise it is impossible for citizens to take any action that allow us to take care of the "tiny territory to live on" that we have".

3. On June 22, 2021, the GAIP will send the claim to the City Council, requesting 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.

4. On June 28, 2021, the City Council forwards to the GAIP the resolution of inadmissibility to the claimant's request and the legal report on which said resolution is based, both documents dated June 28 2021. At the same time, it states that third parties who can

to be affected by the access request are all holders of works and activity licenses who are natural persons.

In relation to the reasons for denying the access request, the legal report states, among other issues, that the access request entails a complex task of elaboration or re-elaboration and is abusive, as well as that, in terms of data protection regulations, the request covers "[...] personal data of natural persons without in any case there being any reasoned interest for its disclosure affecting the rights of said persons affected".

5. On July 5, 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 request a report from 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 RGD, 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".

It should be borne in mind that, in accordance with the provisions of recital 14, the RGD "does not regulate the processing of personal data relating to legal entities and in particular to companies incorporated as legal entities, including the number and form of the legal entity and its contact details".

Consequently, there must be no inconvenience from the perspective of data protection regulations in providing the interested party with information related to the legal entities that have applied for major works licenses and environmental licenses.

Article 4.2) of the RGD considers "treatment": any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction".

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. In this sense, the RGD establishes the need for one of the legal bases of article 6.1, among which section c) foresees the assumption that the treatment "is necessary for the fulfillment of a legal obligation applicable to the responsible of the treatment".

As can be seen from article 6.3 of the RGD 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 RGD when so established by a rule with the rank of law.

For its part, article 86 of the RGD provides that "the personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, organism or entity in accordance with the Law of the Union or of the Member States that

they are applied 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 public information and good governance (hereafter, LT), is pronounced in similar terms, 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 we are dealing with, a list is requested with certain information relating to the requests for major works licenses and environmental licenses addressed to the City Council in the last five years. This information must be considered public in accordance with article 2.b) of the LTC as it is information in their possession as a result of the exercise of their powers.

However, it is necessary to differentiate between the information relating to major works licences, which is subject to the access regime provided for in article 18 of the LTC, and the information on environmental licences, regulated in Law 20 /2009, of December 4, on environmental prevention and control of activities (LPCAA), and which has a special regime of access regulated, mainly, by Law 27/2006, of July 18, by which they regulate the rights of access to information, public participation and access to justice in environmental matters (hereafter LA

III

The claimant is interested in accessing a list that contains, with respect to all requests for major works licenses and environmental licenses addressed to the City Council in the last five years, the information relating to the file number, location of the work or activity (street and number), date of license application, type of performance or activity, holder, processing status, resolution and its date. For the purposes of this report, the analysis must focus on information that identifies or can make individuals identifiable, such as license ownership and, to the extent possible to make an individual identifiable physical, the location data of the work or activity (street and number).

Thus, in relation to the information relating to the licenses for major works, which remain subject to the regime of the right of access to public information of the LTC, it must be taken into account that this right is not absolute and can be denied or restricted by the causes expressly established in the laws, such as the limits of articles 23 and 24 of the LTC with respect

Given the nature of the information requested, it does not seem that there can be data that is particularly protected under the terms provided for in Article 23 of the LTC, that is, 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 public reprimand to the offender. In the event that there is information of this type and in the absence of the owner's express written consent, access should be limited.

Beyond the specially protected data referred to in article 23 of the LTC, and in accordance with article 24.2 LTC, a weighting must be done between the public interest in the disclosure of information and the right to data protection of the affected persons:

"If it is other information that contains personal data not included in article 23 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in 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."

In matters of urban planning, the right of access to information is particularly relevant given the recognition of public action (Article 12 of the Revised Text of the Urban Planning Law approved by Legislative Decree 1/2010, of August 3, TRLU), from which any citizen can demand before the administrative bodies and before the administrative contentious jurisdiction the compliance with the legislation and the urban planning, an exercise that must be adjusted to what is established by the applicable legislation. Consequently, the public action allows anyone to contest the various instruments of arrangement, as well as the acts of the

Planning licenses must be granted in accordance with the provisions of the TRLU, urban planning and municipal ordinances (art. 188 1. TRLU).

In turn, article 3.2 of Decree 179/1995, of 13 June, which regulates the Regulation of works, activities and services of the local entities of Catalonia (ROAS) provides that "the intervention activity of the local authorities must conform to the principles of legality, equality, proportionality and congruence with the reasons and ends that justify the power to intervene, respect for individual freedom and the least burden on citizens".

Article 84.1 of the ROAS already provides for certain publicity to be given to agreements or resolutions granting licenses, by arranging that these be published in the manner provided for in the law and the ordinances of the corporation, and requiring, in all case, its insertion on the notice board and its publication, when there is one, in the municipal newsletter.

In this context, the public interest in the control of planning legality could justify access to the identity of the persons applying or holding the licenses, as well as to the information relating to the work.

Without prejudice to the provisions of article 18.2 of the LTC, according to which the exercise of the right of access to public information is not conditioned on the fact that a personal interest is involved, as well as not remaining subject to the motivation or invocation of any rule, from what the claimant presents it follows that the purpose of accessing the information relating to the licenses for major works would be to check whether they conform to the planning regulations.

It is clear that granting access to this information to the claimant involves revealing personal information that may affect different personal spheres of those affected, mainly the social sphere in terms of accommodation or housing, but it is also clear that to the extent that the purpose of the urban planning regulations is that citizens can verify compliance with the legislation and urban planning, knowing this information may be necessary to be able to exercise the public action recognized in the TRLU.

Given what has been explained, from the point of view of data protection regulations, the regulatory forecasts in urban planning would justify knowing the information relating to the requests for licenses for major works, corresponding to the last five years, including the identification of applicants or owners and the location of the work.

All this without prejudice to the fact that article 31 of the LTC establishes that if the request for public information may affect the rights or interests of third parties, identified or easily identifiable, they must be given the transfer of the request, for so that they can make the allegations they consider appropriate, in those cases that may be decisive for the meaning of the resolution. In the event that, as a result of this procedure, some specific situation is alleged that could justify the imitation of access. You will need to make an assessment of this circumstance.

IV

In relation to the regulation of environmental licenses, this is contained in article 33 et seq. of the LPCAA, and as has already been advanced, remains subject to the right of access regime provided for by the LAIA.

Article 3.1.a) of the LAIA recognizes citizens' right to access the environmental information available to the Administration, without the need to allege a specific interest. In particular, article 2.3.c) of the LAIA includes within the term of environmental information, among others, "Measures, including administrative measures, such as policies, rules, plans, programs, agreements on environment and activities that affect or may affect the elements and factors mentioned in letters a) and b), as well as the activities or measures aimed at protecting these elements".

It is worth saying that the elements and factors referred to in article 2.3.c) of the LAIA refer to "The state of the elements of the environment, such as air and atmosphere, water, soil, the earth, landscapes and natural spaces, including wetlands and marine and coastal areas, biological diversity and its components, including genetically modified organisms; and the interaction between these elements" (art. 2.3.a of the LAIA) and "The factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, spills and other releases into the environment, which affect or may affect the elements of the environment mentioned in letter a)" (art. 2.ab) of the LAIA).

Taking into account what has been set out, the information relating to license applications for the purposes of monitoring compliance with the legality of activities subject to this regime, is information that would be considered included within this concept of 'environmental information and, therefore, subject to the regime provided for by the LAIA.

The statement of reasons of the LAIA recognizes that "[...] Everyone has the right to demand that the public authorities adopt the necessary measures to guarantee adequate protection of the environment, to enjoy the right to live in an environment healthy environment Correlatively, it imposes on all the obligation to preserve and respect that same environment". However, unlike urban planning activity, the regulation of public action in environmental matters is reserved for non-profit legal entities whose purposes recognized in their statutes include the protection of the environment in general, or of any of its elements in particular, which has been legally constituted before two years before the exercise of the action and are active in achieving the purposes provided for in its statutes and that its activity is carried out in the territorial area that is affected by the action, or where appropriate, the administrative omission that is being prosecuted (art. 22 and 23 of the LAIA).

In the case at hand, based on the documentation contained in the file sent, it does not appear that the claimant exercises the right of access to environmental information on behalf of a non-profit legal entity, in the terms that have been exposed.

Article 13 of the LAIA provides for the system of exceptions that the public authority can invoke to deny requests for access to environmental information. In particular, from the perspective of personal data, section 2, point f), provides that requests may be denied if the disclosure of the requested information may negatively affect the "[...] character confidentiality of personal data, as regulated in Organic Law 15/1999, of December 13, on the Protection of Personal Data, provided that the person concerned has not consented to its treatment or disclosure" (article 13.2.f).

At the same time, it should be borne in mind that article 13.4 of the LAIA expressly requires that the reasons for denying access to environmental information be interpreted restrictively, in such a way that in each specific case the public interest served by its disclosure with the interest served by its denial.

In the case at hand, the object of the claim is to access information relating to the applications for environmental licenses addressed to the City Council in the last five years, in particular, the file number, location of the work or activity (street and number), date of license application, type of performance or activity, holder, processing status, resolution and its date.

Given the type of activity that remains subject to an environmental license application, in accordance with article 35 of the LPCAA, in relation to annex II of this rule, it is very likely that the information only tender refers to legal entities, or if applicable to a natural person from their professional perspective. In any case, the possibility that this information refers to a natural person cannot be ruled out, to the extent that article 4 of the LPCAA provides that the holder of the licenses can be both a natural person and a legal entity.

In the case of natural persons, since with regard to legal entities it has already been stated that the RGPD would not apply to them, it should be borne in mind that article 37 of the LPCAA regulates the different procedures in which must be submitted to environmental license applications, among which the procedure for public and neighborhood information, as well as notification and communication, should be highlighted.

Article 41.1 of the LPCAA provides that, once the application has been submitted and the sufficiency and suitability of the environmental study verified, and the rest of the documentation presented, this "[...] must be submitted to public information for a period of thirty days and, simultaneously, it must be submitted to neighborhood information within a period of ten days. [...]. In all cases, the publication states the citizens' right to access information about the specific procedure".

However, section 2 of article 41 of the LPCAA provides that "The data of the application and the accompanying documentation, protected by the confidentiality regime, are excluded from public information".

For the purposes of the confidentiality regime referred to in article 41.2 of the LPCAA, it is necessary to take into account article 15 of Law 21/2013, of December 9, on environmental assessment, whereby:

"1. The Public Administrations that intervene in the environmental evaluation procedures must respect the confidentiality of the information provided by the promoter that, in accordance with Organic Law 15/1999, of December 13, on the Protection of Data of natural persons, have said character, taking into account, in any case, the protection of public interest, without prejudice to what is established in Law 27/2006, of July 18, which regulates the rights of access to information, public participation and of access to justice in environmental matters (incorporates Directives 2003/4/CE and 2003/35/CE).

2. The promoter must indicate which part of the information contained in the submitted documentation considers that it should enjoy confidentiality. The competent Administration will decide on information that, according to current legislation, is exempt from commercial or industrial secrecy, including intellectual property, and on information protected by confidentiality."

On the other hand, with respect to the procedure for notification and communication of applications for environmental licenses, article 50 of the LPCAA provides for the following:

"1. The resolution that puts an end to the procedure must be notified to the applicant person or company and must be communicated to the environmental body of the county council, if this is the body that formulated the resolution proposal, and to the bodies of the competent department in environmental matters that have issued the mandatory reports.

2. In order to publicize the resolution, it must be incorporated into a database of environmental activity licenses that can be accessed electronically."

Thus, the processing of environmental license applications remains subject to different procedures, such as that of public information or the publication of the resolution that ends the procedure, which entail the publication of certain information. Now, taking into consideration the regulations that have been set out, in these procedures it is clear the need for the public administrations

ensure confidentiality from the point of view of personal data, among others, information subject to the regime of data protection regulations.

In this sense, it is not stated in the file that in the present case the consent of the potentially affected persons has been provided so that the information relating to their identity can be revealed (article 13.2.f) LAIA). And, without prejudice to the fact that the person making the claim has made it clear, in summary, that the need for access would be to ensure that the current regulations are checked, there are not sufficient elements from which to understand the relevance of knowing the identification of the holder of the request (or of the applicant) in relation to the defense of the right to an environment suitable for the development of the person and the duty of conservation (art. 3 LAIA) before the City Council, given that the claimant would not, a priori, have the legitimacy to exercise popular action in environmental matters.

Thus, access to the environmental information requested by the claimant, as long as it refers to physical persons (information relating to legal persons remains outside the scope of protection of data protection legislation (article 4.1 RGD))), should be limited on the basis of what is provided for in article 13.2.f) of the LAIA, that is to say, it would not be justified to know the relative information of the license holders.

On the other hand, and given the relevance it can have from an environmental point of view (for example from the point of view of noise pollution), the location of the activity can be relevant. For this reason, the inclusion of this information would be justified, although often the disclosure of this information can make it possible to know, even if indirectly, and with greater or lesser certainty, the identity of the person in charge.

conclusion

The data protection regulations would not prevent access to a list relating to the requests for licenses for major works requested from the City Council in the last five years and, in particular, to the file number, street and number of the work, date of license application, type of action, holder, processing status, type of resolution and its date.

With regard to environmental license applications, it would be justified to access the requested information, except for the identification of the holder when it is a natural person.

Barcelona, July 22, 2021