

IAI 49/2021

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against an organization regarding access to a file including a copy of the documentation presented by the company, the requirements made and acts of 'Inspection.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim presented against an organization regarding access to file no. (...), as well as a copy of the documentation presented by the company, requests made to it and the various Inspection Acts that it incorporates.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, in accordance with the report of the Legal Counsel, I inform you of the following:

Background

1. On April 14, 2021, a person presents to the organization a request for access to file no. (...), as well as a copy of the documentation presented by the company, requests made to it and the various Inspection Acts that it incorporates.
2. On April 20, 2021, the organization informs the applicant of the denial of access to the file based on the following reasons:

"1. Only the responsible subject or subjects who make allegations against the record have the right to see the documents contained in the file, in accordance with article 17.4 of Royal Decree 928/1998, of May 14, by which the general regulation on procedures for the imposition of sanctions for violations of the Social Order is approved. In the case we are dealing with, the file has been finalized without issuing a report of infringement as no non-compliance or infringement of the rules of social order in the matter subject to action has been found, so no has initiated a sanctioning procedure.

2. Nor can we give you the documentation you request, since in accordance with the provisions of article 20.4 of Law 23/2015, of July 21, authorizing the Labor Inspection and Social Security System the complainant cannot allege the legal status of an interested party, since the action of the Labor Inspectorate is an action prior to the sanctioning procedure, and corresponds to an investigation phase, in addition to a public action, for which this body always acts ex officio, in accordance with what is established in article 20.3 of Law 23/2015. And therefore, it is a duty of collaboration for the parties to provide the documentation requested by the Labor Inspectorate.

3. In accordance with the aforementioned article 20.4, the complainant only has the right to be informed of the facts ascertained and of the measures adopted in the inspection, and for this reason and in order to fulfill this obligation, the labor inspector issued a report, which on 2/26/2021 you had access to through the notifications platform of the Generalitat de Catalunya.”

3. On May 20, 2021, the applicant submits a claim to the GAIP against the organization for the denial of access to the requested information and bases the claim on the fact that the investigation referred to in file had as its main basis the investigation of damage to health due to a complaint that she herself had filed and in which she was the affected person.

4. On May 21, 2021, the GAIP requests the organization to issue a report on the claim submitted, identify the third parties affected by the access and send the complete file to which it refers.

5. On June 17, 2021, the organization issues a report on the claim presented in which it sets out the reasons for denying access and includes an annex listing the documentation that makes up the file in which it states their judgment regarding the information to which access must be granted or denied.

6. On July 5, 2021, the GAIP addresses the request for a report to this Authority in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which accompanies the file delivered by the Labor Inspectorate.

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 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 movement of such data and which repeals Directive 95 /46/CE (General Data Protection Regulation, hereafter RGPD).

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 claimed documentation is the file processed by the organization as a result of the complaint filed by the claimant against a town hall for an alleged violation of the occupational risk prevention regulations. As stated in the documentation, the organization reports that: "In the case we are dealing with, the file has been finalized without issuing a report of infringement as no non-compliance or infringement of the rules of social order has been found in the matter subject to action, so no sanctioning procedure has been initiated". In addition to the organization's file, the claimant requests a copy of the documentation presented by the company, the requirements made and Inspection reports. This documentation contains personal data, both of the claimant and of third parties.

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".

According to article 4.2 of the RGPD "consultation, use, communication by transmission, dissemination or any other form of enabling access, access or interconnection, limitation, deletion or destruction" are data treatments personal data subject to the principles and guarantees of the RGPD.

The RGPD provides that all processing of personal data must be lawful, loyal and transparent in relation to the interested party (Article 5.1.a)) and, in this sense, establishes a system of legitimizing the processing of data which is based on the need for one of the bases to meet

legal provisions established in its article 6.1. Specifically, sections c) and e) of article 6.1 of the RGPD provide respectively, that the treatment will be lawful if "it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment", or if "it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment".

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

At the same time, 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, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

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).

The information contained in the file of the claimed body is "public information" for the purposes of article 2.b) of the LTC and remains subject to the access regime provided for in this regulation.

The first additional provision of the LTC states in section 2 that "Access to public information in subjects that have established a special access regime is regulated by their specific regulations and, additionally, by this law ."

The body denies access considering that the specific regulations governing the access regime that would be applicable prevent the person claiming access to the file from being considered an interested person. Specifically, the organization invokes article 20.3 and 20.4 of Law 23/2015, of July 21, Computerization of the Labor Inspection and Social Security System and article 17.4 of Royal Decree 928/1998, of 14 of May, which approves the general regulation on procedures for the imposition of sanctions for violations of the Social Order and for the file liquidators of Social Security contributions.

Sections 3 and 4 of article 20 of Law 23/2015 establish:

"3. The Labor and Social Security Inspection will always act ex officio, as a consequence of a superior order, of a service order derived from inspection plans or programs, to

reasoned request from other bodies, by virtue of a complaint or on the own initiative of the Labor and Social Security Inspectors, according to efficiency and opportunity criteria, all within the terms that are determined by regulation. In any case, the Labor and Social Security Inspectorate will be able to make use of all the information available to schedule inspection actions. The action to report non-compliance with social legislation is public.

4. The complainant will not be able to allege the consideration of an interested party to any effect in the investigation phase, although he will have the right to be informed of the processing status of his complaint, as well as of the facts that have been established and of the measures taken in respect only when the result of the investigation affects your individual or collective rights recognized by the regulations corresponding to the scope of the inspectorate function."

In the same vein, article 9.3 of Royal Decree 928/1998 provides:

"3. The complainant will not be able to allege the consideration of an interested party to any effect in the investigation phase.

The complainant will have the right to be informed of the status of the processing of his complaint, of the facts that have been established and of the measures taken in this regard, only when the result of the investigation affects his individual or collective rights recognized by the regulations corresponding to scope of the inspection function.

In the event that the complaint leads to the initiation of a sanctioning procedure, the complainant may have, in his case, the status of interested party, in the terms and with the requirements established in article 4 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations. In the same case, the status of interested parties in the procedure is expressly recognized to the representatives of the trade union organizations or representatives of the workers, in their capacity as owners of the legitimate interests that derive from their representation. (...)"

According to the special access regime established by article 20.4 of Law 23/2015, of July 21, Computerization of the Labor Inspection and Social Security System, applicable to the case at hand, the person claiming, as complainant, has the right to be informed of the state of processing of the complaint, as well as of the facts that have been ascertained and of the measures taken in this regard, only when the result of the investigation affects their recognized individual or collective rights by the regulations corresponding to the scope of the inspector function.

In the case at hand, it seems that the result of the investigation affects the individual rights of the claimant and therefore has the right to know the status of the complaint, the information relating to the facts that have been ascertained, the possible breaches detected and the measures taken (for example, if requests have been made as a result of your complaint, etc., as well as the final result of the actions taken.

In the case we are dealing with, the file would have ended with a report of actions taken, sent to the person claiming (declarant of the facts) in anticipation of the provisions of article 20.4 of Law 23/2015, of July 21, Work and Social Security Inspection System computer.

With regard to the rest of the information included in the file, the access regime derived from the LTC must be applied additionally.

III

The right of access to public information is not absolute and may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the limitations and criteria provided for in the transparency legislation (articles 23 and 24 LTC), and the principles of the personal data protection.

The documentation relating to the claimed file is integrated, according to the index provided by the same body (with its evaluations regarding access) by the following documentation:

"Index of the documentation contained in the service order (...)

1. Origin of inspection actions a)

Complaints submitted by the worker and claimant:

This is documentation provided by the person making the claim, it would be subject to the regime of access to own data and nothing could be objected to its access.

1.DENUNCIA_ITS
1.DENUNCIA ITSS2
1.DENUNCIAINSPECCIO
1.BISDENUNCIAPG_ASM

Note: they are actually the ones that originate the order of service and to which the actions must be bound. They are confidential due to sector regulations.

b) Documentation attached to the complaints

1complaintAnnex 1- Dates
1complaintAnnex 2- Damage to
Health 1complaintAnnex 3-
SentenceAT 1complaintAnnex 4- Instances

c) 20 Request for IT contingency

2. Documentation that supports and forms the research actions

a) Documentation provided by the claimant and which as such would be subject to the general regime of access to own data.

4. Communications_EMAILS 4.
BIS collects emails

Note: Copies of emails provided by the claimant

b) Documentation included in the actions, to which access is not objected

3Asepeyo_PART 14
Technical report Town Hall

Note: They only contain data specific to the claimant and public officials.

2Diligence_VISIT 2

Note: it contains data of the acting inspector, therefore subject to the general access regime the mere identification data of public personnel (name and position or position) that appear in the documentation contained in the file)

8Technical architect job sheet
9 Architect job sheet

c) Documentation included in the actions regarding which we understand that it is necessary to anonymize data

6 Psychosocial risk assessment

People who participated in the consultation (page 5)

People who participated in its preparation (p. 11)

15 Budget

16 Psychosocial risk action procedure

17 Psychosocial risk action procedure-2

18 Procedure action

d) Documentation in relation to which access must be limited

5Comunicats_BAIXA_ALTA

Note: These are the worker's resignation and termination notices - copies for the company-

. In the case of particularly sensitive data - despite the fact that it refers to the claimant - we teach that for prudence and weighting regime it must be preserved.

7Accident investigation sheet

19Result of health examination

Note: We understand that it is necessary to preserve for the same reasons.

10 PRL report

11 Report PRL-2

12 Report PRL-3

13 Health report qualification

21 MISCELLANEOUS 1

22 MISCELLANEOUS2

23 Resolution_TOWN COUNCIL

24 Allegations_AJUNT_ASM

25 Appeal height_TOWN COUNCIL

Note: They contain a lot of personal data. Applying the case-by-case weighting regime, we understand that it is necessary to limit access

3. Documentation of completion of inspection actions.

a) 32 COMPLAINT RESPONSE b)

31 REQUIREMENT_COMPANY

33 FORM-DOCAJUNTAMENT response

to the request made by the inspector

c) Request for access to the file and copy of the documentation

34AccusationReceivedSOLACCESEXP

35 DENEGACIOVISTAEXPED

4. Other complaints to the City Council

26 Complaint_APD_1

27 Complaint_APD_2

28Notification_RESOL_AJUNTAMENT

29 Receipt_registres_GAIP_AJUNTAMENT

30Rekurs_extraordinari_AJUNTAMENT"

From the analysis of the documentation that makes up the claimed file, it follows that a very important part is information provided by the claimant with the complaint or information relating to her person (the complaint itself, the medical reports, the copies of the emails contributed in which she is the sender or recipient, additions and deletions, all claims submitted to the town hall and other bodies, etc.)

Article 24.3 of the LTC states that "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 that establishes the legislation for the protection of personal data".

In this case, however, the access request does not only affect personal information of the person making the claim. Considering that the documentation contained in the file would also affect third parties, access must be resolved in accordance with the regulation of the right of access provided for in the transparency legislation.

According to article 23 of the LTC "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 membership, 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, unless the person concerned expressly consents to it by means of a written document that must accompany the request."

This precept excludes access to data relating to physical or mental health or any other information deserving of special protection unless the person concerned expressly consents to access by means of a written document accompanying the request.

However, with regard to the claimant's own data, this limitation would not apply since the purpose of this article is to prevent access to the data of third parties, but not to the data itself.

It must be taken into consideration that the data protection regulations recognize very widely the right of those interested to access their own data. Thus article 15 of the RGPD establishes:

"1. The interested party will have the right to obtain from the person in charge of the treatment confirmation of whether or not personal data that concern them are being processed and, in such case, the right to access the personal data and the following information: a) the purposes of the treatment; b) the categories of personal data in question; c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations; d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period; e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment; f) the right to present a claim before a control authority; g) when the personal data has not been obtained from the interested party, any available information about its origin; h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party. 2. (...)

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."

This precept recognizes the right of the person affected or interested (natural person owner of the data that is the subject of the treatment) to request and obtain from the person in charge of the treatment a copy of their personal data subjected to treatment, including the information on the origin of the data when these have not been obtained from the same interested person.

The right of the natural person who owns the data that is the subject of treatment, in this case, the person claiming, to request and obtain from the person responsible for the treatment a copy of

personal data subjected to treatment, is not limited or conditioned depending on the type or categories of personal data to which the holder requests access.

It should be borne in mind that this right of access is not absolute, and could be limited in accordance with the provisions of article 23 RGPD, but from the information available, it does not seem that in the case at hand any of these limitations.

Therefore, in accordance with the data protection regulations regarding the claimant's health data, including the termination notices provided by the City Council (example provided by the company), the investigation files accident and the result of the health examination (doc. 5,7 right to access) is recognized for admissions and discharges. This will be a decisive element in the weighting that, as we will see, must be done in accordance with article 24 LTC.

IV

Regarding the rest of the information that does not contain special categories of data, article 24 of the LTC establishes:

"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."

According to article 24.1 of the LTC, 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 personal data merely identifying unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

Article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information, specifies that pursuant to the provisions of Article 24.1 of Law 19/2014, of 29 December, "merely identifying personal data are those consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and postal and electronic addresses, of professional contact, referred to the staff at the service of public administrations, senior officials and managerial staff of the public sector of public administrations".

As a result, access could be given to the identification data of the Labor inspector who appears in the documentation of the file and of other public employees who appear in the file as a result of the exercise of their public functions. It must be taken into consideration that the ID of these people and the handwritten signature would not be included in this merely identifying data (art. 70.2).

With regard to the rest of personal data, the claim of access requires that it be subjected to a weighting judgment in accordance with the provisions of article 24.2 of the LTC. In other words, a prior reasoned weighting between the public interest in disclosure and the right of the affected persons in which all the circumstances affecting each specific case are taken into account with the aim of elucidating the prevalence between the right of access and the rights of the people affected, taking into account the different elements listed in the aforementioned article (purpose of access, the fact that it may affect the safety of people, etc.). This would affect both the claimant's own data and the data of third parties included in the file.

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With regard to the data of the person making the claim, as has already been explained, it should be taken into account for the purposes of the weighting that article 15 of the RGD recognizes the right of access of the person concerned (natural person owner of the data that is the subject of the treatment) to your own information. This means that with respect to the claimant's own information contained in the file, the weighting must necessarily be in favor of access.

This includes the possibility of accessing all the reports, evaluations and resolutions included in the file as well as the e-mails in which the person making the claim is the recipient (or the sender), among which there would be the e-mails provided to the file by the head of the planning section in which the recipient or sender is the claimant.

The right of access to one's own data, as explained, also includes the right to obtain any information about the origin of the data (Article 15.g) RGD). This would allow the claimant to access not only the direct information about her person that may appear in the file, but also the identity of the people who provided this information in the inspection procedure.

With respect to the information collected as a result of the inspection activity (statements, e-mails), it must be taken into consideration that the Report issued by the body includes the names and surnames of the staff of the city council who were summoned to testify which, according to the same report "They provide the requested documentation and provide a statement in relation to the organization of the prevention of occupational risks in the company, the mea

matter of psychosocial risks in the work center and in particular the procedure followed in relation to health risks and the situation of psychosocial risk communicated by the worker".

As set out in the second basis of this report in application of article 20.4 of Law 23/2015, the claimant had access to the report issued by the body. Therefore, she already knows the names of the people who were called to testify and the summary of their statements.

Beyond the information collected in the inspection report, the file may contain documentation provided by the declarants, such as the copy of the emails between the head of the urban planning section and the occupational risk prevention service of the town hall, about the person making the claim, or emails between the head of the town planning section and the occupational risk prevention service of the town hall, about the person making the claim.

This information would affect third parties. However, as far as the person making the claim is concerned, they would have the right to access this information. The claimant must be able to know this information in order to have an overall view of the reasons for the resolution of the conflict, and if applicable, to be able to refute certain facts or situations described by third parties. From this perspective, knowing the origin and content of the information about your person may be necessary for the purpose intended by the person making the claim.

This is, of course, unless in the hearing procedure that must be given to the affected persons, some circumstance is alleged that could justify a limitation of access.

The same criterion would be applicable to the Investigation report for an alleged case of moral harassment in the planning service processed by the City Council's occupational risk prevention service (which is part of the documentation sent by the city council). This report refers to the situation experienced by the claimant but also includes references to the people involved in the planning department who have participated in the investigation. The purpose of being able to refute certain facts or situations described by third parties and, ultimately, to have an overall view of the reasons for the resolution of the conflict investigated by the city council, requires that the person making the claim has complete information for the purposes of the purpose pretense, which includes the origin of the statements that

VI

In addition to this documentation, the file may include other documents that contain personal data of third parties who are not co-workers of the claimant. This would be the case of the psychosocial risk assessment report (which incorporates the name and surname data of the risk prevention technician from the city council's occupational risk prevention service and the occupational risk prevention coordinator, as well such as the identification data of the technicians of the security company in charge of its preparation) or e-mails between the occupational risk prevention service and the prevention company contracted by the city council (incorporates the personal data of employees of the 'company).

In the specific case of the psychosocial risk assessment report, it is carried out on the basis of the surveys carried out among the ten workers in the town hall's technical area of planning, but does not include their identification.

In this case, and based on the fact that this document does not contain data related directly or indirectly to other natural persons other than the municipal employees who have drawn up the documents or that appear in them as a result of the exercise of their functions, the weighting between the right of the person claiming to access the requested information and the right to data protection of these municipal employees, the decision would be in favor of access in the same terms in which we have already referred to the legal basis IV on access to the data of the Labor Inspector that appears in the documentation of the file and of other public employees that appear in the file as a result of the exercise of their functions.

With regard to the employees of the occupational risk prevention company who sign the report, given that the right of defense of the person claiming that would constitute the purpose of the access would also be achieved without sacrificing the privacy of these people and in accordance with the principle of data minimization (Article 5.1.c RGPD), access to this information should in principle be I

The same criterion should be followed, with respect to the rest of the documentation that incorporates personal data of the employees of the company contracted by the city council for the prevention of occupational risks.

Conclusions

The data protection regulations do not prevent the person making the claim (complainant in the file processed by the body) from being able to know the status of processing the complaint, the information relating to the facts that have been ascertained, the possible breaches detected and the measures taken, as well as their personal information contained in the file, including also the merely identifying data of the officials and staff of the administration that are the documents in which they appear.

Regarding the psychosocial risks report, it could also be accessed, given the content that has been described, except for the personal information of the employees of the company contracted by the city council for the prevention of occupational risks.

Barcelona, July 23, 2021