

IAI 50/2021

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 Department of the Generalitat, for the denial of access to information in relation to the actions carried out in the field of psychosocial risks, labor conflicts and other situations relating to the staff of a Home of children

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 by a citizen, in relation to the denial of access to information on the actions taken in terms of psychosocial risks, labor conflicts and other situations relating to the staff of a nursery.

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 April 9, 2021, a citizen, who identifies himself as a worker at the Children's Home (...), submits two requests to the Department of the Generalitat of Catalonia, with the same content, in which he explains that he is a worker assigned to the Children's Home, and in which he requests:

"Have access to all the documentation contained in the competent units in the field of human resources, prevention of occupational risks and health at work of the Department (...) of the Generalitat (requests for intervention, complaints, reports of actions carried out and other documentation) generated in these units or received in them from other bodies or organizations (Labour and Social Security Inspection, Directorate General of Public Function, Public Health Agency of Catalonia or similar) in relation to psychosocial risks, labor conflicts and situations of interpersonal hostility reported and/or detected since 2012 in the work center where I provide my services, the Children's Home (...).

In accordance with the provisions of article 23 of Law 19/2014, of December 29; article 70 of Decree 8/2021, of February 9, and the sixth additional provision of Organic Law 3/2018, of December 5, I attach the express consent of the affected person."

2. On April 12, 2021, the Department notifies the person requesting the accumulation of the two requests that this person would have made on April 9, 2021, with the same content. On April 19, the person requesting the extension agreement to resolve the two accumulated requests is notified.

3. On June 13, 2021, the applicant filed a complaint with the Commission for the Guarantee of the Right of Access to Public Information (GAIP), alleging that he has requested information on the actions taken in the matter of psychosocial risks, labor conflicts and other situations relating to the staff of the Children's Home, and that the Department has denied him access.

4. On June 15, 2021, the GAIP informs the Department of the presentation of the claim, 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. It is contained in the file Resolution of the general secretary of the Department, dated June 22, 2021, in which it is stated that the Department would not have been able to resolve the request within the corresponding period, and it is decided to estimate partially the request for access to public information, in particular, it is decided to provide the applicant with a copy of the "Psychosocial risk assessment report", of April 23, 2016, corresponding to the Home of 'Children, which appears in the file sent to this Authority.

6. It is stated in the file that, on June 28, 2021, the Department sent the requested report and file to the GAIP, and informed the GAIP that "there are no third parties affected by the information requested, although we are talking about information that is considered confidential by the Prevention-Public Function and Inspection of the Department's Services units (...) and the Labor and Social Security Inspection."

7. The file contains a copy of the supplementary letter addressed by the claimant to the GAIP, on July 1, 2021, in which he explains that he considers the documentation provided by the Department to be insufficient, and states, among others, that the The Department has not taken into account that the affected worker has given her express consent for access.

8. On July 5, 2021, the Commission for the Guarantee of the Right of Access to Public Information (GAIP) requests from the Catalan Data Protection Authority the report provided for in article 42.8 of the Law 19/2014 of December 29, on transparency, access to public information and good governance. On July 8, the GAIP re-sends the documentation relating to the Claim to the Authority, given that the previous submission contained erroneous documentation.

#### Legal Foundations

#### I

In accordance with article 1 of Law 32/2010, of October 1, the Catalan Data Protection Authority (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. 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 (hereinafter, RGPD), defines the concept of personal data as "all information about an identified or identifiable natural person ("the interested party")" and considers as a person identifiable physical "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 physical identity, physiological, genetic, psychological, economic, cultural or social of said person."

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 complaint presented is against the denial of access to information and documents in relation to "psychosocial risks, labor conflicts and situations of interpersonal hostility reported and/or detected since 2012 in the workplace", in reference to the Children's Home where the claimant works.

Law 19/2014, of December 29, 2014, on transparency, access to information and good governance (hereafter, 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 mentioned article 2.b) 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 the which are supplied by the other obliged subjects in accordance with the provisions of this law".

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

The information and documentation that can be part of the file or files, if applicable, related to situations of psychosocial risks that may have occurred and investigated in relation to workers at the Children's Home, during the period referred to in claimant (since 2012), as well as the documents that he has drawn up or that he has collected by the Department in r

request made, 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 (art. 20 et seq.).

For the purposes of this report, at the outset, it is appropriate to specify what information the claimant's request would be referring to, given the information available.

In his request, the claimant asks for information in quite broad and general terms, as he refers to situations related to the "personnel-related" psychosocial risks of the Kindergarten since 2012. Thus, he refers only to requests for intervention, complaints, performance reports and other documentation, for labor conflicts or hostile situations reported or detected in the center.

The claimant explains that he has the "express consent" of another person (and encloses a letter signed by this person, as well as a photocopy of his ID), who would also be a worker at the center, whom the claimant identifies as an "affected person" .

This third person, in his writing, gives consent to the claimant "to access all the documentation contained in the Department (...) of the Generalitat de Catalunya in relation to the situations that I have reported and the actions that I have requested, encouraged and / or that have been processed in the field of occupational risk prevention and health at work and in the field of existing labor conflicts in the workplace (...). I also authorize you to present the documentation that I have provided you about the actions of the lady (...)" . This last reference is made to a third person. Given the information available, it is unknown if this third person would also be a worker at the Children's Home.

The claimant, in the supplementary letter (email) addressed to the GAIP on July 1, 2021, apart from reiterating that the Department has not taken into account that it has the express consent of the affected worker (ex. art. 23 LTC), specify your request in the following terms:

"Therefore, and in accordance with what was stated in the first paragraph of this email, the information provided is considered insufficient, and it is requested that the Department (...) can confirm whether the documents in respect of which it is denied access (section B2: Labor Inspection documents and documents relating to a case of psychological harassment at work and other discrimination at work case with code no. 29-17\_anon.pdf) affect or have been motivated by the person whose consent is attached to the access request and, if affirmative, provide the documentation that this person has presented or that has been notified to him by the Administration (where appropriate, anonymized with respect to the third parties who have been able to object to access). And the same would be extended with respect to the documentation relating to a case of psychological harassment at work and other discrimination at work case with code no. 30-17, which despite not appearing in section B2 of the resolution, is mentioned. Likewise, regarding the documentation relating to another case of psychological harassment at work and other discrimination at work case with code no. 6-21 followed at the request of this interested party, the documentation available to the Department (...) is requested that has not been presented by the applicant or notified to him (if applicable, anonymized with respect to the third parties that have been able to object to access), especially in order to know the indications th

The Public Service has sent the Department (...) in relation to this case so as to be able to assess the degree of compliance with these instructions, especially taking into account the existing history of conflicts in this work center.

Finally, with respect to the three requests to activate the Harassment Protocol mentioned above, it is requested that information be provided on the actions carried out by the Administration of the Generalitat (number of people interviewed in each case, indicators subject to observation in each specific case - such as absences from work, staff mobility or others and assessment obtained from these indicators, etc.)."

Therefore, the claimant identifies three cases of activation of the Harassment Protocol, regarding which he requests information, and to which we will refer in this report.

Before referring to these three cases, it must be noted that among the information requested, there is some that, according to the terms of the request, would not contain personal data: ((number of people interviewed in each case, indicators subject to observation in each specific case - such as absences from work, staff mobility or others and assessment obtained from these indicators, etc.)."

The information relating to the number of interviews that could have been carried out, or indicatives that have been used to analyze the cases raised, are information that would not allow, given the information available, the direct or indirect identification of any natural person.

Therefore, in these terms, the data protection regulations would not be an obstacle to be able to give the claimant access to this information that does not include other people's personal data.

Having said that, this report will focus on the rest of the documentation that the claimant would request (in the terms specified in the letter of July 1st, addressed to the GAIP), and on the possible limitations that may arise regarding to the right to the protection of personal data.

We note that article 24.3 of the LTC establishes that "requests for access to public information that refer only to the personal data of the applicant must be resolved in accordance with the regulation of the right of "access established by the legislation on the protection of personal data."

However, although the information requested includes information on the person making the claim, the provisions of Article 24.3 of the LTC would not apply in this case, since the information requested would not exclusively contain data personal data of the claimant, but also of other natural persons who may appear in the requested documentation and information

Having said that, in accordance with article 20 and s. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically, with regard to information containing personal data, it is necessary to assess whether the right to data protection of the affected persons would justify or not the limitation of the right of access to public information invoked by the claimant.

### III

Articles 23 and 24 of the LTC regulate the limits on access to public information when the information sought to be accessed contains personal data.

First of all, 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 affiliation, religion, beliefs, 'racial origin, health and sexual 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 affected party expressly consents by means of a written which must accompany the application."

When the information you want to obtain contains specially protected data of third parties, such as health data (probable possibility in documentation related to situations of psychosocial risk in the work environment, specifically with regard to health data, but also the one relating, if applicable, to the commission of possible administrative or criminal offences), it should be borne in mind that article 23 of the LTC does not allow this access. For this reason, in principle, this information that is particularly protected from third parties (such as other harassed persons or even witnesses, etc.), should be excluded from the requested access (eg art. 23 LTC).

However, with regard to the first case in respect of which the claimant requests information (which would affect the other center worker whose consent he has), there would be no inconvenience for the claimant to access the personal information of the affected party, to the extent that consent is available.

It should be mentioned, that with regard to the third assumption that is raised (psychological harassment of the claimant), article 23 would not also prevent access to health information that affects the claimant himself, given that the limitation provided for in article 23 would not affect access to the own data but only to the data of third parties.

#### IV

With regard to the rest of the information, the analysis of the requested access requires a prior weighting between the different rights and interests at stake, in accordance with article 24 of the LTC:

"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.”**

**At the outset, article 24.1 LTC would enable the claimant's access to the merely identifying information of personnel or positions that may be contained in the reports or documents that may have been drawn up by the Department, or that it has (for example, the name and position of the official or authority who signed a report).**

**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".**

**Beyond this, and focusing now on the third case, that is, the one referring to the harassment of the same person making the claim, it should be borne in mind that article 15 of the RGPD recognizes the right of access of the interested person (natural person owner of the data that is the subject of the treatment) to access their own information, in the following terms:**

**"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, (...). 2. (...)**

**3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. (...)**

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

**The right of access (art. 15 RGPD) is not absolute, and could be limited in accordance with the provisions of article 23 RGPD, among others, "(...) cuando tal limitation respete en lo esencial fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard: (...) i) the protection of the interested party or the rights and freedoms of others;”**

In the report of June 22, the Department refers to the duty of secrecy that would entail establishing the secret and confidential nature of the information, based on the provision of article 21.1.c) which provides as a limit to the right of access to public information "the secrecy or confidentiality in the procedures processed by the Public Administration, if the secrecy or confidentiality is established by a rule with the rank of law."

However, the general consideration of the information as "confidential" cannot in any case imply a limitation to the right of access to the information or documentation referred exclusively to the claimant himself (art. 15 RGPD).

As this Authority has agreed, the information or data relating to the person making the claim (for example, assessments made by a witness about the claimant), must be considered for the purposes of the personal data protection regulations as information of the claimant, as an affected person (ex. art. 4.1 RGPD), and therefore, must have access to it.

The right of access to one's own information is a decisive element when weighing Article 24.2 LTC, without appreciating, as has been explained, the existence of any limit to the right to 'access recognized in article 15 RGPD, nor any other circumstance that advises limiting the claimant's access to their data.

Apart from this, article 24.2.b) of the LTC establishes as a weighting element that the purpose of the access is taken into account.

Obtaining the requested information could be relevant for the purposes of evaluating the management carried out by the Public Administration in relation to situations of psychosocial risks or labor conflict that, if applicable, have directly affected this person, and may justify access to the requested information, taking into account the purpose of the Transparency Law (art. 1.2 LTC). Thus, the claimant must be able to compare the information contained in the documentation he claims and in the actions that have been carried out in relation to his own person, in relation to his work or health situation, and to be able - to do so he must be able to access all the information about him in the claimed documentation. The access must allow the claimant to know, compare and verify, if applicable, the veracity of the information that may be contained in the requested documentation.

With regard to knowing the identity of third parties who have been able to provide information (witnesses, other people in the work environment), remember that the data owner's right of access (art. 15 RGPD) also includes the right to know the origin of the data subjected to treatment and, therefore, the identity of the reporting person or persons, if applicable, or of the other persons, workers or not, of the Children's Home, who have provided information about the claimant.

The information that a witness could provide, not about the claimant himself but about the consequences that the labor conflict situation could have for the state of mind, psychological or physical, of this witness or complainant, would be information of 'this third person, who should be able to remove himself from the set of information to which the claimant could have access, and to which we have already referred.

In this sense, and for the purposes of the necessary weighting, it does not seem that a priori the access of the claimant to the information of third parties (for example, of another worker who has given testimony) can be justified, beyond the aforementioned to the claimant's own facts or conduct, for the purposes or with the purpose that the claimant can verify facts or conduct attributed to him, or find out what measures the Administration has taken in relation to his employment situation.

Thus, for example, it would be necessary to limit access to the statements, opinions or explanations provided by the witnesses or by the complainants, referring to their own work or personal situation, or even to the work or personal situation of other workers in the Kindergarten.

The principle of data minimization requires that any data processing carried out (such as data communication or access) is limited to the minimum data necessary to achieve the intended purpose of this processing (Article 5.1.c ) GDPR).

In any case, we note that the claimant himself, in his supplementary letter of July 1, states that in the event that any personal circumstance arises that justifies the preservation of the identity of third parties, he requests that the information be provided (both in reference to himself and to the other worker who would have authorized him to request her information), "where appropriate, anonymized with respect to third parties who may have objected to access".

Therefore, it is clear from the interested party's own letter that he prioritizes knowing his own information, and not knowing the identity or other personal data of third parties.

In any case, this Authority wishes to emphasize the special relevance of complying with the hearing procedure provided for in article 31 of the LTC in these cases, and to know if there are personal circumstances or reasons that would justify preserving the identity of third parties.

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Below we refer to the second case referred to by the claimant on July 1, 2021, in the following terms: "And the same would be extensible with respect to the documentation relating to a case of psychological harassment at work and other discrimination at work case with code no. 30-17, which despite not appearing in section B2 of the resolution, is mentioned in point A1.3."

Regarding this specific case, section A1-3 of the Department's report explains that: "On September 13, 2017, the Director of Territorial Services (...) received two information forms from one - application about a case of psychological harassment at work and other discrimination at work, which have not been accepted for processing: Form 3a Code: 30/17 and Form 3a Code: 29/17, drawn up by the General Directorate of Civil Service of the Department of Digital Policies and Public Administration, currently of the Presidency."

Unlike the information relating to cases of labor conflict in which the claimant himself (third case) or the other worker whose consent is obtained (first case) are directly affected, with regard to this third case, there is no of information that allows it to be considered that it directly affects the claimant.

**This being so (and except for the claimant's access to his own data that may be contained in this file), it would not be justified that, taking into account the considerations made in this report, the claimant should have access to personal information of third parties which could be directly affected in this case which, according to the Department, would have been filed as it had not been admitted to the procedure.**

### **Conclusions**

**Data protection regulations do not prevent the claimant from being given access to information that does not include personal data (number of people interviewed, indicators used, etc.).**

**The data protection regulations allow the claimant to access information relating to a third person whose consent he proves to have.**

**The claimant has the right to access all the information about him that appears in the documentation available to the Department, including the origin or identity of the people who would have provided the information, unless it results from the hearing procedure some circumstance that justifies the limitation of access. On the other hand, access to the rest of the information on third parties that may be contained in the requested information, beyond the mere identification data of the people responsible for the processing of the documentation, does not appear to be justified.**

**Barcelona, July 29, 2021**