

IAI 51/2021

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 submitted by a citizen for the partial denial of access to the administrative file related to a complaint submitted by him

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 against the competent department in matters of education for the partial denial of access to the administrative file relating to a complaint presented by him to the Education Inspectorate.

Having analyzed 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 I issue the following report.

Background

1. On April 21, 2021, a citizen addresses a letter to the Territorial Education Inspectorate in (...) in which he requests:

"(1) That I be sent the full content of the administrative file corresponding to the COMPLAINT that I filed on the day (...) before the Territorial Education Inspectorate (...), through the electronic register (...). This includes all documentation: the agreement initiating the procedure, all procedural acts, including all reports, resolutions, orders, directions and all other information and documentation found in the detailed administrative file.

(...)

(5) To indicate to me all the authorities and all the personnel of the Educational Administration under whose responsibility the procedure initiated by my COMPLAINT filed on (...) is processed, or has been processed before the Territorial Education Inspection (...), through the electronic register (...).

(...)."

2. On June 2, 2021, the Head of the Technical Cabinet of the Information Unit of the Department competent in matters of education issues a resolution approving the request for access to public information requested tendered in the following terms:

"In relation to your request for access to public information, we inform you that your right of access has been estimated in accordance with article 18.1 of Law 19/2014, of December 29, of transparency, access to public information and good governance, which recognizes the right of all people to access public information.

Given that the request is accepted and there has been no opposition from third parties, the resolution is replaced by this communication, as provided for in article 34.8 of the aforementioned Law 19/2014.

In reference to your request for public information to access the complaint file before the Educational Inspectorate, we inform you of the following:

- **Administrative file of the complaint A**
compressed .zip folder with the files that are part of the processing is provided to the person requesting it.
- **Complaint processing status The**
Resolution Proposal sent electronically, with the complaint/complaint dismissed.
- **Organs/bodies that instruct the complaint**
Education Inspection to the Territorial Services (...).
- **Organs/authorities that process/resolve the**
complaint Directorate of Territorial Education Services (...).
- **Concept of interested**
party The presentation of a complaint does not confer, by itself, the status of interested party in the complaint procedure (article 62.5 of Law 39/2015, of October 1, on common administrative procedure of public administrations (LPAC). Despite this, the Department considers that, if the minor has allegedly suffered discriminatory treatment and his legitimate interests have been affected, it could be considered that the minor child is an interested party and that you act as legal representative holder of parental authority (art. 154 of the Civil Code) and that, therefore, we can consider you an interested party and, as such, access the documentation in the name and representation of the legitimate interests of your minor child ...”

3. On June 3, 2021, the applicant filed a complaint with the GAIP against the Territorial Education Inspectorate (...) for partial denial of access to the requested information.

In the document accompanying the claim, the applicant states, among other things, that:

- Once the ZIP file made available to you has been reviewed, "its content contains only my own writings submitted to the Education Inspectorate, a response that was notified to me on 9-2-2021 by part of the Education Inspectorate and a resolution proposal from the Director of Territorial Services that was notified to me electronically last 5-24-2021."
- The e-mail received by the Education Inspectorate on May 5, 2021 during the processing of the complaint file shows that it has not been given access with an electronic copy of the entire file, as request

In this email, a copy of which is attached to the file sent, it is agreed that:

"(...) Regarding the performance of the inspection, it was already planned to send the corresponding documentation to him in electronic format.

This administrative documentation in some cases includes information not relevant to the procedure and names of people, and may not be displayed in full, either in person or electronically. Our intention in summoning him is that he could verify the correspondence of the complete documents and the documents with this non-pertinent information removed."

Beyond that, in the proposed resolution of the Director of Territorial Services that has been notified to him, mention is made of a report from the Education Inspectorate of May 12, 2021, which is not included in the file ZIP that has been made available to you.

- Point 5) of your request for public information has been disregarded regarding the information on the identity of the authorities and staff of the Educational Administration under whose responsibility it is being processed, or 'has processed, the procedure initiated following his complaint.

4. On June 9, 2021, the GAIP sent the claim to the Department, requiring it to issue a report on which to base its positions, as well as the complete file relating to the request for access to public information and the identification of third parties affected by the requested access.

5. On July 5, 2021, the Department transfers to the GAIP the file relating to the request for access that is the subject of this claim, together with the report issued by the General Secretariat of the Department in this regard.

In this report, the Department argues, in summary, that:

- He has made available to the person claiming a compressed folder with 10 files that correspond to the content of the file generated as a result of the complaint submitted.

The documentation of this file covers up to the resolution proposal phase, given that the claimant has presented to the Territorial Services (...) allegations with attached documentation that have been sent to the Education Inspectorate for to its assessment prior to dictating the corresponding express resolution.

- He has not delivered, through this folder, to the person claiming an electronic copy of the Education Inspection Reports and other documentation because they are actions specific to the information phase prior to the initiation of the corresponding procedure, and also on the basis of article 23 of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), given that they contain data related to the commission of administrative infractions, which would allow directly and/or indirectly identify the affected persons and, therefore, because the privacy and professional reputation of these persons could be harmed.

The specific actions carried out by the Education Inspectorate in the prior information phase include:

- Interview with the claimant in order to gather information about the fact that is the subject of complaint
- Information request, by email and phone call, to the educational center about the facts
- Interview with the management team and teachers about the facts. • Letter addressed to the management of the educational center asking for explanations about the no delivery of the life notebook to the plaintiff's son.
- Request for explanations, by email, asking teachers for explanations about the facts
- The final report issued by the Education Inspectorate, in which it is proposed that the actions be archived if sufficient reasons have not been established to initiate the corresponding procedure.

- In the documentation of the ZIP file made available to the claimant there are two documents (Report of the Education Inspection of February 4, 2021 and the Resolution Proposal of May 20, 2021), in which identify by name and surname the authorities responsible for the investigation and processing of the complaint.

6. On July 12, 2021, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

7. On July 15, 2021, the GAIP sent this Authority new documentation in relation to this claim.

It is, specifically, the letter of allegations of the person claiming in the report of the General Secretary of the Department, mentioned in point 5 of these antecedents, in which, in summary, it reiterates that in the The ZIP file that has been made available to you does not contain the complete file to which you are entitled. In particular, it mentions the exclusion of the report of the Education Inspectorate of May 12, 2021 and refers that its content is essential to exercise the defense of the legitimate rights of your minor child in his public schooling

Legal Foundations

I

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

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

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (article 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 repeals Directive 95/46/EC (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.

II

The claim is filed against the partial denial of access and obtaining an electronic copy of the file processed following a complaint submitted by the person making the claim to the Education Inspectorate due to events that occurred in the educational center of his child, a minor, that could have involved a discriminatory action towards him.

As stated in the antecedents of this report, the Department would have appreciated the request for information from the person making the claim and, for that purpose, would have made available to them a compressed file (ZIP), which would contain 10 documents which are part of the

However, certain information would have been excluded. Specifically, as can be seen from the report issued by the Department on the present claim, there is no information related to the different investigations carried out by the Education Inspectorate (interviews with the person making the complaint (the now claimant) and with the management team and the teachers involved in the events reported; and several requests addressed to the management of the center and the teachers involved asking for explanations about the events reported), as well as the report of the Education Inspectorate with the conclusions of the investigation phase and which must allow the competent body to issue the corresponding decision to file the complaint or initiate the corresponding disciplinary or sanctioning procedure.

In view of the information available, it can be assumed that this report from the Education Inspectorate corresponds to what the claimant refers to on several occasions as the report from the Education Inspectorate of May 12 of 2021 in his writings and that it has not been delivered to him.

The complaint is also lodged against the lack of response to the request to obtain the identification of the authorities or personnel of the Educational Administration who process, or have processed, the file in question.

In the report issued by the Department on this claim (notified by the GAIP to the claimant on July 7, 2021) it is clarified that this information can be obtained from documents 5 and 9 included in the ZIP file placed available to the claimant. There is no allegation regarding the claimant in his letter of July 13, 2021, so his request in this regard must be considered satisfied.

Therefore, it can be said that the purpose of this claim is to access and obtain a copy of the report of the Education Inspectorate of May 12, 2021 and of the investigation carried out by it (interviews and different information requirements).

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

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides 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".

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

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

Article 18 of the LTC recognizes the right of people 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 entity" (section 1).

Article 2.b) of the LTC defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law".

For its part, article 53.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), specifies that it is public information subject to the right of access "all the information, any data or documents that the public administrations have

elaborated, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their duties."

The information and/or documentation that makes up a prior information is "public information" for the purposes of the LTC (article 2.b) LTC) and remains 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

It follows from the file sent that this information in the present case will include personal data referring to the same person who requests access, who is the reporting person and the parent of the child involved in the events reported (therefore, there will also be information about the child), as well as information about the person in charge of investigating the incidents reported, and information about the management and teaching staff involved in these incidents, either as i

It is necessary to examine, below, the possible limitations that may arise in relation to the requested access with regard to the right to the protection of personal data of the potential affected.

III

The personal data protection regulations recognize the right of access to one's own personal information (Article 15 RGPD) 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, 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.”

As this Authority has decided on previous occasions (among others, in reports IAI 54/2018, IAI 34/202, IAI 9/2021 or IAI 21/2021, which can be consulted on the website www.apdcat.cat), based on article 15 of the RGPD, the claimant (complainant) has the right to know the direct information about him that is being treated by the Department and that is part of a file or that is included in the documentation or information that requests And this includes (article 15.1.g) RGPD) the identification of the source of the information.

Also, and in accordance with article 12.6 of the LOPDGDD, which provides that "the holders of parental authority may exercise the rights of access, rectification, cancellation, opposition or cualesquiera otros que pudiesen corresponderles in the context of this organic law" has the right to know the information that the Department is processing about his child following his complaint and is part of said documentation, to the extent that he is the holder of the power parental

However, this right is not absolute and may be limited in accordance with the provisions of article 23 of the RGPD:

"1. The Law of the Union or of the Member States that applies to the person responsible or the person in charge of the treatment may limit, through legislative measures, the scope of the obligations and the rights established in articles 12 to 22 and article 34, as well as in article 5 to the extent that its provisions correspond to the rights and obligations contemplated in articles 12 to 22, when such limitation essentially respects fundamental rights and freedoms and is a necessary and proportionate measure in a society democratic to safeguard: a) the security of the State; b) the defense; c) public security; d) the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, including the protection against threats to public security and their prevention; e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including in the fiscal, budgetary and monetary areas, public health and social Security; f) the protection of judicial independence and judicial procedures; g) the prevention, investigation, detection and prosecution of violations of deontological norms in the regulated professions; h) a function of supervision, inspection or regulation linked, even occasionally, with the exercise of public authority in the cases contemplated in letters a) ae) and g); i) the protection of the interested party or the rights and freedoms of others; j) the execution of civil demands. (...)"

In the present case, the reason for the denial of access cited by the Department is that the request

of public information refers to information from a previous information phase carried out by the Education Inspectorate for the purposes of assessing whether the corresponding procedure is initiated following the facts reported by the person making the claim.

Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC) expressly provides for the possibility that the competent body, before agreeing to the start of an administrative procedure, can open a period of prior information with the purpose of knowing the circumstances of the specific case and the convenience or not of starting the procedure (article 55).

This is contained in the Resolution of May 24, 2004 of the General Secretariat of the Department of Education, by which instructions are issued on the procedures to be followed in the case of complaints submitted by students, parents, teachers or other interested person who questions the provision of the service in a public teaching center of the Department of Education, in accordance with which, according to the Department, the complaint submitted by the person making the claim has been processed.

Bearing in mind that the purpose of these preliminary actions is to determine on a preliminary basis whether or not the circumstances exist that can justify the imputation of facts constituting an infringement through the initiation of the corresponding procedure, access to the information provided or generated during its processing remains limited to the person or persons who carry it out and may limit the right of access to the data owner provided for in article 15 of the RGPD, while this phase is being processed (among others, Judgment no. 1212/2005, of November 25, of the Superior Court of Justice of Madrid (TSJM)).

The LTC itself establishes the possibility of limiting or denying access to public information if its knowledge or disclosure entails a detriment to the investigation or sanction of the administrative or disciplinary offense in question (article 21.1.b)).

It is stated in the file that the Director of Territorial Services would have dictated on May 20, 2021 a proposal for a file resolution, in view of the considerations made by the Education Inspectorate in its report of May 12, 2021 on the lack of evidence to initiate the corresponding procedure (disciplinary or adversarial non-disciplinary, as the case may be).

It is also stated that the proposal for filing resolution would have been notified to the person claiming on May 24, 2021, who would have made the relevant allegations within the 10-day period granted, which is why it would have been transferred to the Education Inspectorate for its evaluation prior to issuing the final resolution.

As long as the prior information is processed, its reserved nature must certainly prevail and the person making the claim has no right to access its content. This includes both the information about you (and your child) contained in the documentation or information that is part of the previous information, despite the provisions in article 15 of the RGPD, as well as that other information referred to third parties

However, once this phase of investigation concludes, it may lose its reserved or confidential character (STSJM 471/2006, of May 24). In the present case, it seems that this would have happened (in fact it is indicated that the procedure is at the stage of proposal for a resolution) and therefore this could not be a reason to deny access to the person making the claim to all the information about you (or about your child) that appears in the information provided or

generated in the course of the previous information. That is to say, his own writings (complaint, allegations, etc.), which would have already been made available to him, and also that information from him (or his son) that may be contained in the report of the Inspection of Education requested and, if applicable, in the investigation proceedings carried out (at least, that which could be derived from your interview with the Education Inspectorate, in case a record or similar

The existence of this right, recognized by the data protection regulations, will necessarily favor the weighting referred to in article 24.2 of the LTC in favor of access to the own data contained in the aforementioned information .

Regarding access to other personal data of third parties, once the preliminary investigation phase is concluded, taking into account that the Department has recognized the person claiming the status of interested person (article 4 LPAC) and that we would meet in the face of a procedure that has not been completed at the time of the access request, the right of access that regulates the administrative procedure regulations (DA 1a LTC) must be taken into account, as well as what may be provided for in the Resolution of May 24, 2004 of the General Secretariat of the Department of Education, already cited.

IV

Article 53.a) of the LPAC provides that interested persons have the right to access and obtain copies of the documents contained in the procedures in which they have this condition.

For its part, article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, also establishes that "citizens who have the status of persons interested in a administrative procedure in progress have the right to access the file and obtain a copy of the documents that are part of it. If the documents are in electronic format, citizens have the right to obtain electronic copies."

With regard specifically to the context in which we find ourselves, relating to the processing of a complaint or complaint submitted by the parent of a student of a public center about the performance of a worker of the same center (teaching or management staff) , the Resolution of May 24, 2004 of the General Secretariat of the Department of Education, states (point 3 of annex 2) that:

"(...)

- the management of the Territorial Services will draw up the resolution proposal and notify it to all interested parties, who will be able to make allegations within ten days; given what the interested parties have expressed, the management of the Territorial Services will adopt the appropriate resolution on the complaint, denunciation or claim presented and will indicate the resources that, administratively, are appropriate. The Territorial Services must then notify the resolution adopted to the affected person and, at least, to the first signatory of the complaint, and forward a copy to the center's management and the Education Inspectorate."

The applicable administrative procedure legislation recognizes the right of interested persons to access the information contained in the procedure and to obtain copies of it in fairly broad terms. They also have the right to use the resources provided for by the legal system regarding administrative decisions that affect them.

In the specific case, access to the information contained in the complaint procedure by the person making the claim (who formulates the complaint), as an interested party, must in any case include the resolution proposal as well as the resolution of the procedure.

This does not mean, however, that this right of access is an absolute right. It must be borne in mind that if it comes into conflict with other rights, as in this case it could be the fundamental right to the protection of personal data (Article 18.4 EC), it will be necessary to weigh up the different rights at stake, in order to decide which one should prevail and to what extent.

In fact, the LPAC itself establishes that it is necessary to apply the limitations provided for in the transparency legislation when it regulates the obtaining of copies or access to the file of the persons interested in the hearing procedure provided for in article 82.1. This provision must also be understood as applying with respect to the right of access provided for in article 53.1.a) of the LPAC, and, consequently, what is established in articles 23 and 24 of the LTC.

v

As we have seen, the object of this claim is the report of the Education Inspectorate resulting from the previous investigation phase, as well as that other documentation that, if applicable, is available as a result of the proceedings of research carried out (interviews and information requests).

In this information or documentation it is clear that, apart from the information about the person making the claim to which, as has been said, he would have the right to access it on the basis of article 15 of the RGPD, and of the identification of the education inspector or other personnel who have intervened in the investigation in the exercise of their duties, to which they may have access in accordance with article 24.1 LTC, information relating to the person or persons reported or investigated (managerial and/or teaching staff) for the alleged commission of some irregular action in the exercise of their duties, which could constitute an administrative offense or punishable offense in disciplinary matters.

In accordance with the Resolution of May 24, 2004 of the General Secretariat of the Department of Education, when deciding on the complaint, denunciation or claim, the management of the Territorial Services may decide, among other possibilities, to open the procedure appropriate to the effects to demand responsibilities in the disciplinary field (point 4 of annex 2).

Article 23 of the LTC, relating to personal data deserving of special protection, states that "requests for access to public information must be denied if the information sought contains personal data especially protected, such as those relating to ideology, 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 involve the "public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request."

In similar terms, article 15.1 of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), in its wording given by the eleventh final provision of the LOPDGDD, provides that:

"1. If the requested information contained personal data that revealed ideology, trade union affiliation, religion or beliefs, access could only be authorized in case

that there is the express and written consent of the affected person, unless said affected person had made the data manifestly public before access was requested.

If the information includes personal data that refers to racial origin, health or sex life, includes genetic or biometric data or contains data related to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, access only it may be authorized if the express consent of the affected person is counted or if the latter is covered by a rule with the force of law.”

From the perspective of data protection, despite the fact that the previous actions end with their archive and the corresponding disciplinary procedure is not initiated, the information about the persons reported or investigated is considered information related to the commission of administrative infractions. It should be borne in mind that the mere fact of providing information about a person who has been investigated for facts that could constitute a disciplinary offense could cause serious damage to their privacy, particularly in view of the nature of the facts being investigated (in this case, these are facts that could constitute a discriminatory action towards a minor). This means that, despite the doubt that may arise regarding its inclusion in the access regime of article 23 of the LTC - because the disciplinary procedure has not been initiated -, a reasoned weighting between the different rights and interests at stake that would need to be done in accordance with article 24.2 of the LTC, would also oblige us to take into account this circumstance that could lead to a denial of access.

Apart from this information regarding the commission of administrative infractions, it cannot be ruled out that, based on the statements made by the same persons under investigation (teaching staff and managers) and in view of the context in which the events took place, also there could be other information in the controversial documentation that needed to be protected in particular, such as explanations or details that they have given about the consequences that the problem raised has on their own state of mind, psychological or physical.

Article 23 of the LTC only allows access to information relating to the commission of offenses by third parties and/or other data deserving of special protection with the express written consent of the persons affected by the access requested. Article 70.2 of the RLTC states that it is up to the applicant to provide this consent at the time of the access request, which is not recorded to have occurred in this case. Despite this, article 15.1 of the LT also allows access to this type of data when it is covered by a rule with the rank of law.

Considering that the primary purpose of the right recognized in the aforementioned article 53.1.a) of the LPAC (and in similar terms to article 26 of Law 26/2010) is to guarantee the right of defense (article 24.1 EC and 53.1.e) LPAC) of the person interested in the procedure and that, in this case, the interested person is the signatory of the complaint or the informant of the facts (not the person affected by the complaint, therefore, the investigated), in order to allow the complainant access to information of this sensitive nature specific to the persons under investigation, it would be necessary for said information to be relevant to the defense of their legitimate interests in the complaint procedure.

In this sense, the claimant argues that "the content of the Education Inspection report of 12-5-2021 is information to which I am entitled and it is essential to exercise the

defense of the legitimate rights of my minor son in his public schooling. In the procedure, I have to know the version and express narration of the facts by those responsible for the facts, for the eventual contribution of evidence against."

He also adds that "the access I claim to the copy of the report of the Education Inspectorate of 12-5-2021 and other acts dictated in the controversial procedure, could be recent and fundamental proof of the administrative inactivity that we challenge judicially."

In the report of the Education Inspectorate and, where applicable, in the documentation generated during the investigation proceedings, different or complementary information may be included or may be derived from that referred to in the resolution proposal (of which the person claiming would be aware of it) that could be relevant to the claim made by the person claiming, in terms of defending the rights and legitimate interests of their minor child in their schooling, especially in this case, in which the management of Services Territorials proposes the dismissal of its complaint.

This information can also be used to evaluate the management carried out in the specific case by the Department in the exercise of its functions of inspection of the educational system, which include the supervision, advice and evaluation of educational centers and services, for the purposes of 'ensure the application of the order and guarantee the exercise of the rights and the fulfillment of the duties arising therefrom (article 178 Law 12/2009, of July 10, on education).

It must also be taken into consideration that the identity of the persons investigated (managerial and/or teaching staff) seems to be already known by the person making the claim, given the context in which the reported events took place and the terms of the complaint .

Also that the facts attributed to the people investigated and about which they have given a statement or provided information during the investigation phase, and which will also have been collected in the Education Inspection Report, with greater or lesser detail, they are facts in which the claimant (and his child) has directly participated.

As explained, article 15 of the RGPD establishes the right of access to one's own personal information (and that of one's minor child), so with respect to this information the weighting has been to necessarily favor access. And this also includes the identity of the people who (for example as witnesses) have been able to provide some information about the claimant or their child, unless they have alleged some circumstance that justifies limiting access.

It is stated in the file that the Department would have complied with the hearing procedure provided for in article 31 of the LTC and article 62 of the RLTC, without any of the affected third parties having presented, within the period granted, allegations to oppose the access to public information requested by the person making the claim.

It also states that the person making the claim would already have the identification of the education inspector as well as the rest of the Department's staff who have intervened in the complaint procedure.

In view of the concurrent circumstances in the present case in view of the information available, it must be concluded that the claimant's access to the report of the Education Inspectorate of May 12, 2021 would be justified and , if applicable, other documentation generated during the investigation phase, as requested.

This, without prejudice to the fact that, where appropriate, other information that needs to be protected in particular in accordance with article 23 of the LTC and/or that is irrelevant to the person's claim must be omitted from this documentation claiming, such as, for example, other identifying data other than the first and last name, or those explanations or details that they have given about their own work situation or about the consequences that the problem produces in their work environment or, even , in their own state of mind, psychological or physical.

conclusion

Taking into account that, based on the information available, we would be faced with an unfinished procedure at the time of the access request, in which the person making the claim would hold the status of interested party, and the rest of the concurrent circumstances , it is necessary to recognize the claimant's right to access and obtain a copy of the Education Inspection Report and, where appropriate, other documentation drawn up during the previous investigation phase. This, without prejudice to omitting those data that are unnecessary or irrelevant for the defense of your rights and legitimate interests, as set out in the legal basis V.

Barcelona, September 3, 2021

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