

IAI 59/2021

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to the claim against a Department of the Generalitat for the denial of access to the notices and attached documents of the cloisters and school councils of an Institute from June 1, 2017 to the present

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 a Department of the Generalitat for the denial of access to the notices and attached documents of the cloisters and school councils of an Institute from June 1, 2017 to the present.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, this Legal Advice reports the following:

Background

1. On May 30, 2021, a citizen requests the following information from a Department of the Generalitat:

"All the invitations and the documents attached to them from the cloisters and school councils of the Institute (...) from June 1, 2017 to the present day. This request includes emails sent as a call.

The Annual General Programs, and the Institute's Annual Reports (...) from the 2016-2017 academic year to the present day."

2. On June 8, 2021, the Department notified the applicant of the agreement to extend the deadline to resolve his request based on the complexity and volume of the information requested.

3. On July 20, 2021, the applicant submits a claim to the GAIP against the Department in which he requests:

"All the invitations and the documents attached to them from the cloisters and school councils of the Institute (...) from June 1, 2017 to the present day. This request includes emails sent as a call. The Annual General Programs, and the Institute's Annual Reports (...) from the 2016-2017 academic year to the present day."

4. On July 26, 2021, the GAIP requests the Department 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 August 10, 2021, the Department issues a report in relation to the claim presented, in which it refers to and provides the resolution of August 6, 2021 by means of which the right of the sun is partially estimated requesting access to the information regarding the fact that the claimant would have been part of the School Council and the Teachers' Council for a period of time. In particular, the Department agreed to provide him with the notices, minutes and annexed documentation of the sessions he attended, as well as the Annual General Programs, and the Institute's Annual Reports (...) from the 2016-2017 academic year until the present

6. On August 12, 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.

Legal Foundations

I

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

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

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (art. 4.1 of Regulation 2016/679, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and by which Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

II

The data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the 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 RGD "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 RGD.

The RGD 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 legal bases established in its article 6.1 to apply. Specifically, sections c) and e) of article 6.1 of the RGD 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 r

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

At the same time, article 86 of the RGD provides that "The personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, 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).

In the case at hand, the information requested consists of the notices and the documents attached to them (including the minutes) of the Senate and the School Council of the Institute (...) from June 1 2017 to the present, it is public information in accordance with article 2.b) of the LTC, subject to the right of access (article 18 of the LTC).

On the other hand, the Annual General Programs, and the Annual Institute Reports (...) from the 2016-2017 academic year to the present day, do not seem to include personal information in principle, therefore, apart from already have been delivered, it would be left out of this report.

However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data.

III

In order to inform about access to information in the case at hand, it is necessary to analyze, first of all, what is the information that, given the regulatory regulations, can be contained in the requested documentation and, consequently, what are the types of data personal data that can be expected to contain and from which groups. And, secondly, if there is a special regime for access to this information and if this special regime would be applicable to the claimant.

Regarding the first question, the requested documentation is the convocations of the cloisters and the School Councils and the attached documentation including the e-mails sent as a convocation, in a period of time starting from June 1 of the year 2017 at the time of making the claim.

It should be borne in mind that in accordance with Organic Law 2/2006, of 3 May, on education (hereafter LOE), teachers' cloisters and school councils are collegiate governing bodies of educational centers (article 119).

The functions of the School Council in accordance with the provisions of article 117 of the LOE consist of:

"a) Approve and evaluate the projects and rules referred to in Chapter II of Title V of this Law. b) Approve and evaluate the center's annual general programming, without prejudice to the competences of the faculty in relation to teaching planning and organization. c) Know the candidacies for the directorship and the directorship projects presented by the candidates. d) Participate in the selection of the director of the center in the terms established by this Law. Be informed of the appointment and dismissal of other members of the management team. If necessary, with the prior agreement of its members, adopted by a two-thirds majority, propose the revocation of the director's appointment. e) Decide on the admission of students subject to the provisions of this Law and the provisions that implement it. f) Promote the adoption and monitoring of educational measures that promote the recognition and protection of children's rights. g) Propose measures and initiatives that promote healthy lifestyles, coexistence in the center, effective equality between women and men, non-discrimination, prevention of school bullying and gender-based violence and peaceful resolution of conflicts in all areas of personal, family and social life. h) Be aware of behaviors contrary to coexistence and the application of educational, mediation and corrective measures and ensure that they conform to current regulations.

When the corrective measures adopted by the principal correspond to student behavior that seriously harms the coexistence of the center, the school council, at the request of parents or legal guardians or, where appropriate, of the students, may review the decision taken and propose, if necessary, the appropriate measures. i) Progressively promote the conservation and renovation of facilities and school equipment to improve quality and sustainability and approve the obtaining of complementary resources in accordance with the provisions of article 122.3. j) Set the guidelines for collaboration, for educational and cultural purposes, with local administrations and with other centers, entities and bodies. k) Analyze and evaluate the general operation of the center, the evolution of school performance and the results of internal and external evaluations in which the center participates.

l) Prepare proposals and reports, on their own initiative or at the request of the competent Administration, on the operation of the center and the improvement of the quality of management, as well as on other aspects related to its quality. m) Approve the centre's budget project. n) Any others attributed to him by the Educational Administration.

With regard to the teaching staff, article 129 of the LOE establishes its powers:

"a) Formulate proposals for the development of the center's projects and the general annual program to the management team and the school council. b) Approve and evaluate the completion of the curriculum and all the educational aspects of the projects and the general annual schedule. c) Set the criteria for guidance, tutoring, evaluation and recovery of students. d) Promote initiatives in the field of experimentation and pedagogical research and in the training of the center's teaching staff. e) Elect their representatives in the school council of the center and participate in the selection of the director in the terms established by this Law. f) Know the candidacies for the directorship and the directorship projects presented by the candidates. g) Analyze and evaluate the general operation of the center, the evolution of school performance and the results of internal and external evaluations in which the center participates. h) Issue a report on the rules of organization and operation of the center. i) Learn about the resolution of disciplinary conflicts and the imposition of sanctions and ensure that these comply with current regulations. j) Propose measures and initiatives that promote coexistence in the centre. k) Any other attributed to him by the Educational Administration or the respective rules of organization and operation."

The legal regime of these collegiate bodies must conform to the rules contained in Law 40/2015, of October 1, on the legal regime of the public sector (hereafter LRJSP), as well as what establishes Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia.

With regard to the notices, article 17.3 of the LRJSP establishes that (...)Unless it is not possible, the notices will be sent to the members of the collegiate body through electronic means, stating in the same the agenda together with the necessary documentation for its deliberation when possible, the conditions under which the session will be held, the connection system and, where applicable, the places where the necessary technical means are available to assist and participate in the meeting". 7

The convocations can incorporate, in their documentation, the content of the minutes of the previous session for approval, as established in article 18 of the same LRJSP.

"1. Minutes will be drawn up by the Secretary of each session held by the collegiate body, which will necessarily specify the attendees, the agenda of the meeting, the circumstances of the place and time in which it was held, the main points of the deliberations, as well as the content of the agreements adopted. The sessions held by the collegiate body may be recorded. The file resulting from the recording, together with the certification issued by the Secretary of the authenticity and integrity of the same, and any documents in electronic support used as documents of the session, may accompany the minutes of the

sessions, without the need to include in it the main points of the deliberations.

2. The minutes of each session can be approved at the same meeting or the next one. The Secretary will draw up the minutes with the approval of the President and send them via electronic means to the members of the collegiate body, who will be able to express by the same means their agreement or objections to the text, for the purposes of their approval, considering, in if so, approved at the same meeting.

When you have opted for the recording of the sessions held or for the use of documents in electronic support, they must be kept in a way that guarantees the integrity and authenticity of the corresponding electronic files and access to them by the members of the body collegiate

In accordance with this provision, the proceedings of each session may collect, at least, data from identified persons, both the attendees and the persons to whom the agreements refer) or identifiable (for example, from the summary of the matters or the interventions of the attendees).

Given the functions attributed to teachers' councils and school councils and the documentation that must be included in the calls for these collegiate bodies, it is foreseeable that the requested documentation may contain personal data from different groups, including data from vulnerable groups (as in the case of minors) and of various natures, among which there may be special categories of data (either minor health data, relating to minors with educational needs special or disabled, etc.) as well as data relating to the commission of criminal or administrative offenses (given the functions relating to the knowledge of the resolution of disciplinary conflicts and the imposition of sanctions that letter i) of article 119 of LOE attributes to the cloister).

Secondly, according to the Department's report, the claimant would have been part of the Teachers' Council and the School Council. It should be taken into consideration in this respect that Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia provides that it must be guaranteed that the members of the collegiate bodies can participate in the sessions and defend their positions and for that purpose they must have the necessary information regarding the topics covered by the call. Thus articles 18 and 20 of this legal text establish:

"Article

18.2 (...)

2. Regardless of the means used, the right of the members of the collegiate bodies to participate in the sessions must be guaranteed, and also the possibility of defending and contrasting their respective positions, the formation of the collegiate will and the maintenance of the constitution quorum (...)

5. Before the beginning of the session, or exceptionally during the course of it, the members of the collegiate body can present amendments, additions or alternative proposals, which must be debated and voted on in the session.

Article 20.4

(...)

4. It must be guaranteed that members can access the minutes in electronic format to consult the content of the agreements adopted. (...)

The second additional provision of the LTC provides.

"2. 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 regulatory regulations of the collegiate bodies may constitute a special regime for access to public information regarding access to information on notices, agendas and minutes of the sessions of these bodies and the documentation related to them, by the members of the collegiate bodies.

However, this access regime is applicable while the person holds the position. Once the position is no longer held, if this circumstance will be an important element to take into account when deciding on access, it will be necessary to take into account the regulations provided for in the LTC. From the information sent by the Department, it seems possible to deduce that the applicant is no longer part of the School Council and the Teachers' Council, therefore, it will be necessary to comply with the provisions of the LTC.

However, a clarification should be made, given that the claimant considers that there can be no dismissal outside the deadline. It should be borne in mind that despite article 35.1 LTC establishing a regime of estimated silence, section 35.2 of the same article establishes that the right of access cannot be acquired by administrative silence if any of the limits established by this or other laws are met to have access to public information. Therefore, taking into account that the information claimed may affect personal data, access to this information could not be acquired by silence, under any circumstance.

IV

Focusing on the information related to the calls and attached documentation, it should be taken into account that, in accordance with article 23 of the LTC "Requests for access to public information must be denied if the information sought contains specially protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, as well as those relating to the commission of criminal or administrative infractions that do not entail a public reprimand to the offender, unless the affected party expressly consents by means of a written document that must accompany the request."

As stated, the requested information could contain specially protected data under the terms of article 23 LTC, either health data of children with special educational needs, etc., or other typologies provided for in this article, including data relating to the commission of administrative infractions. With respect to this information, access by the claimant must be preserved.

With regard to public information not affected by the provisions of article 23 of the LTC, the analysis must be carried out based on the provisions of article 24 of the LTC, which provides the next:

"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 perform

this weighting must take into account, among others, the following circumstances:

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. „

The requested documentation will contain details of those in charge of drawing up the calls and signing the minutes, functions that correspond to the secretary and the president of the School Council and the Senate. In both bodies the secretary is the secretary of the center and the president the director of the center (articles 126 and 131 LOE), in the case at hand, since it is a public center they will have the status of public employees. According to the aforementioned 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 only identifiers 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 for the purposes of what is provided for in article, 24.1 of the LTC "personal data are merely identifying those consisting of the name and surname, the position or position held, body and scale, the functions carried out and the telephone and the addresses, postal and electronic, of professional contact, referring to the personnel in the service of the public administrations, high positions and personnel manager of the public sector of the public administrations".

Therefore, facilitating the claimant's access to the merely identifying data of the public employees responsible for processing the notices and minutes of the cloister and the school council, in the terms indicated, would not be contrary to the right to the protection of personal data.

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.).

v

In relation to the documentation (calls, minutes and documentation attached to them), relating to the period in which the applicant was part of the School Council and the Faculty Council, the weighting must necessarily be given to favor of access It should be noted that while he was a member of these bodies, the applicant had full access to them. And this regardless of whether he had actually attended the session or not, given that the right of access is justified not by his attendance but by being part of it.

It must be taken into account that in the case of the members of the Senate and the School Council who are representatives of the school in their capacity as teachers or administrative staff, it does not seem that there should be a problem from the point of view of data protection regulations when providing merely identifying data

of these members under the terms of article 24.1 LTC, given their status as public employees and the privacy expectations they may have in the exercise of their duties. In addition, this is information that will already be known by the claimant, at least that corresponding to the time he was a member of those bodies. These same criteria would be applicable to the identification data of the councilor or representative of the City Council on the School Board.

Likewise, with regard to the members of the school council representing parents and students, their first and last names will certainly be known by the teachers who are members of the faculty and, consequently, by the person making the claim. In addition, the privacy expectations that these people have with respect to the actions they carry out as representatives of their associations do not foresee that they can be considered harmed by the communication of their data without any other information associated with them. In fact, article 15.3.c) of the LT establishes as one of the criteria in the reasoned weighting of the public interest in the disclosure of information and the right to data protection of those affected "The least harm to the rights of those affected in the event that the documents only contained data of a merely identifying character". Therefore, it does not seem that there should be any problem from the point of view of data protection regulations in providing this information to the person making the claim.

In addition to this personal information, the notices and the attached documentation, including the minutes of the previous sessions, are likely to contain, as already explained, personal data of those interested in the agreements made by the body registered. The expectations of these people must necessarily include that any of the people who are part of a collegiate body that must intervene in the processing or decision of a matter must be able to access the information necessary to the functioning of the body and for the body to adopt its agreements.

The mere fact that time has passed and that he is no longer part of the body does not invalidate these considerations. It should be borne in mind that as a member of the body he could have kept the information obtained at the time, in order to keep records of his own performance and that of the other members of the body, for example in front of 'eventual responsibilities.

This means that, with respect to the information relating to the period in which he was a member of these bodies, the weighting must necessarily be decided in favor of access.

In any case, however, the specific calls for each of the members may include identifying and location data (physical address, email, etc.) as well as personal incidents related to the call. The person claiming would not have the right to access this documentation, since as a member you have the right to access the content of the call, but not to access the contact details or incidents of other members of the body related to the call .

VI

With regard to the information from the period in which he was no longer a member of these bodies, it can be expected that a significant part of the data refers to students of the center. The RGPD establishes that the data of minors must be subject to specific protection (Consideration 38 RGPD). Therefore, in the absence of a specific justification that substantiates the need for access, which does not seem to exist in the case at hand, in the weighting of rights the protection of the personal data of minors must prevail and therefore access to this personal information should be denied.

As for the rest of the data, this Authority does not know in detail what information is contained in the requested documents. However, based on the functions attributed to these bodies, it can be deduced that it can affect, for example, candidates for the management of the centers.

In accordance with the powers attributed to the School Council and the Faculty Council, by articles 117.c) and 129.f) respectively, of the LOE these bodies have the power to "Know the candidacies for the management and the projects of address presented by the candidates". The presentation of these candidacies forms part of the selection process for the director of the center regulated in article 143 of Law 12/2009, of July 10, on the education of Catalonia. 12

In the weighting, it must be taken into account whether the communication can be relevant, in some sense, for the "fulfilment of public interest purposes for the benefit of all citizens" that must be pursued, among others, by the administrations public, as set out in the Preamble of the LTC in addition to also examining whether there is a particular interest or legitimate purpose on the part of the claimant, which can justify access to the information requested.

In this sense, any citizen must be able to know whether the legally established procedure has been followed and, for this purpose, it would be sufficient to know whether the candidacies and projects have been presented to those collegiate bodies and the agreement reached in respect. But it would be excessive, for this purpose, to divulge the content of the projects. In addition, the privacy expectations that candidates may have regarding their projects are conditioned by their participation in a selection process and the right of defense - and the consequent need to be able to have access to the file - which assists other participants in the process, but not any citizen who has not participated in the process.

Finally, those agreements that may contain information that must be the subject of active advertising in accordance with the provisions of articles 8 to 15 of LTC, such as, for example, agreements relating to the contracting of services (supervisors of extracurricular activities, services of kitchen, etc.), recruitment of staff, etc. in accordance with the criteria presented and to the extent that it is information that has already been the subject of publicity, the right to public information should prevail and the weighting w

VII

Article 70.5 of the RLTC establishes that in cases where, in application of the reasoned weighting of article 24.2 of the LTC, access to public information containing personal data is denied, the public administrations, in application of the principles of proportionality and partial access, they must give access to the rest of the information, after anonymization or pseudonymization of this data, when possible.

According to article 4.5 of the RGPD, pseudonymization means "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears separately and is subject to technical and organizational measures aimed at ensuring that personal data are not attributed to an identified or identifiable natural person".

The aforementioned article 70.5 includes in its statement the concept of pseudonymization in the same terms as the RGPD. With regard to anonymization, the RLTC defines it as: "the elimination of the personal data of the natural persons affected contained in the information and any other information that may allow them to be identified dir

or indirectly without disproportionate efforts, without prejudice to being able to maintain, where appropriate, the merely identifying data of the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act".

In the case we are dealing with, the Department will have to provide the requested information with the prior anonymization of the personal data referring to minors that allow them to be identified directly or indirectly, taking into account the criteria set out in the basis VI of this report.

Conclusions

The regulations for the protection of personal data do not prevent the claimant from accessing the requested information from the period in which he was part of the Faculty Council and the School Council, regardless of whether he attended the sessions or not, although it is necessary to exclude the contact details and location of the other members contained in the notices, as well as the incidents associated with these communications.

With regard to the period in which he was not part of these bodies, the data protection regulations do not prevent access to the documentation, including the merely identifying data of the secretary and the president of the School Council and the Faculty Council and the other members of these collegiate bodies. However, apart from removing the contact and location details of the other members listed in the notices, as well as the associated incidents, it will be necessary to anonymize the data relating to minors and limit access to information containing special categories of data under the terms of article 23 LTC, as well as the projects of the candidates for management.

Barcelona, September 2, 2021