

IAI 62/2021

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 City Council for the denial of access to information on the breakdown of the destination of the financial endowments given by the corporation to the municipal political groups, with invoices included, from the month of June 2019 to June 2021.

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 City Council in relation to the refusal of access to information on the breakdown of the destination of the financial endowments given by the corporation to the municipal political groups, with invoices included, from June 2019 to June 2021.

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

#### Background

1. On June 14, 2021, a citizen presents a letter to the City Council in which he requests a breakdown of the destination of the financial endowments given by the corporation to the municipal political groups, with invoices included, from the month from June 2019 to June 2021.
2. On July 20, 2021, the interested party submits a claim to the GAIP alleging that more than a month has passed without obtaining a response from the corporation. In this letter, the claimant reiterates that he wants to access the requested information.
3. On July 26, 2021, the GAIP requests the City Council for a report in relation to the claim presented.
4. On August 24, 2021, the GAIP reiterates the request for a report to the City Council.
5. On September 9, 2021, the GAIP requests this Authority to issue a report in relation to the claim submitted.
6. On the date of issue of this report, the Authority is not aware of the presentation of the report by the Corporation.

## 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.

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

According to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), personal data is: "all information about a 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; (art. 4.1 RGPD).

Therefore, the processing of personal data (art. 4.2 RGPD) that may be contained in the requested information, specifically, the invoices justifying the expenses incurred by the municipal groups, is subject to the principles and guarantees of the protection regulations of personal data (RGPD).

According to article 86 of the RGPD:

"The personal data of official documents in the possession of some 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 it in order to reconcile public access to official documents with the right to the protection of personal data under of this Regulation."

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

Article 18 of Law 19/2014 establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (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 related to the financial endowments that the municipal political groups receive from the municipal budgets is "public information", subject to the access regime provided for in the transparency legislation. However, in accordance with article 20 and s. of Law 19/2014, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information containing personal data, it is necessary to assess whether the right to data protection of the affected persons can justify or not the limitation of the right of access to public information regula

### III

The object of the claim is to obtain a breakdown of the destination of public money received by each of the municipal political groups, with invoices included, in the period from June 2019 to June 2021.

Article 73.3 of Law 7/1985, of April 2, regulating local regime bases (LRBRL) provides:

"3. For the purposes of their corporate action, the members of the local corporations will form political groups, in the form and with the rights and obligations that are established with the exception of those who are not part of the political group that constitutes the electoral formation by those who were elected or who leave their group of origin, who will be considered non-affiliated members.

The Plenary of the corporation, in charge of its annual budgets, may assign to political groups an economic endowment that must have a fixed component, identical for all groups and another variable, depending on the number of members of each one of them, within the limits that, as the case may be, are established with a general character in the Laws of General Budgets of the State and without which they can be allocated to th

personnel remuneration of any type in the service of the corporation or the acquisition of goods that may constitute fixed assets of a patrimonial nature.

The economic and political rights of non-affiliated members may not be superior to those that would have corresponded to them had they remained in the group of origin, and will be exercised in the manner determined by the organic regulations of each corporation.

This provision will not apply in the case of candidacies presented as an electoral coalition, when any of the political parties that make up it decide to abandon it.

The political groups must keep a specific accounting of the endowment referred to in the second paragraph of this section 3, which they will make available to the Plenary of the Corporation, whenever it requests it. (...)"

In accordance with the LRBRL, the General Assembly of the corporation can allocate to the political groups financial endowments that must contain a fixed component, identical for all groups and another variable, depending on the number of members of each of the groups, and within the limits that may be established by the respective General Budget Laws of the State. These endowments, the amount of which is to be determined by the Plenary, cannot be used for the payment of staff remuneration of any kind in the service of the Corporation, nor for the acquisition of goods that may constitute fixed assets of a patrimonial nature.

Regarding access to information on the destination and justification (invoices included) of the expenses that the political groups would have made with the financial endowments received, the claimant bases the access request on article 3 section 4.b) LTC, according to which the transparency obligations are also applicable to political parties, if at least forty percent of their annual income comes from subsidies or public aid, as long as this amount is more than 5,000 euros.

However, it must be borne in mind that the financial allocations provided for in article 73.3 LRBRL, are not made to political parties but to municipal political groups.

From the point of view of the data protection regulations, it is necessary to analyze to what extent the personal information contained in the information requested may be affected by the eventual access of a citizen to the accounting and supporting documentation that may eventually be provided the different political groups at the request of the Plenary of the corporation.

In this sense, with regard to the information relating to legal entities that may be contained in the allocations or in the supporting invoices for the expenses of the municipal groups, it remains outside the scope of protection granted by the regulations on data protection personal data (Article 4.1 RGPD), as is information relating to the group's performance, as long as it does not refer to a specific councillor. Consequently, there would be no impediments, from the perspective of data protection, to give the claimant access to the amounts allocated to the groups or to the information relating to legal entities.

With regard to information relating to natural persons, in principle, due to the type of information requested, it does not appear that this may contain particularly protected data. So, for

in order to grant access, a reasoned weighting will need to be done between the different rights and interests at stake, taking into account article 24.2 LTC.

According to article 24.2 LTC:

"access to the information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. 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. (...)"

#### IV

The person making the claim does not justify the specific reason for which they want to access the requested information. In this sense, although in accordance with article 18.2 LTC the right of access is not subject to motivation, this may be relevant when deciding on the prevalence between one and other rights, in fact the purpose is one of the weighting criteria indicated by the same Law (art. 24.2. b) LTC).

Thus, in the absence of concreteness on the part of the applicant, it is necessary to place the purpose of access in the context indicated by article 1.2 LTC, when it states that the purpose of the transparency law is to establish a system of relationship between people and the Public Administration and the other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and of responsibility in public management."

With regard to the requested information on the destination of the amounts paid to each of the groups given that the allocation is made to the political group and not to the specific people who make it up (councillors in this case), as we have already pointed out, this information alone cannot be considered to be personal information.

Having said that, it is worth remembering the provisions regarding active advertising established by article 15 of the LTC for information relating to subsidies and public aid. According to this precept, subsidies and public aid granted must be published on the transparency portal with an indication of the amount, the object and the beneficiaries of the last five years, updated, the information related to financial control and the justification or withholding of accounts by the beneficiaries.

Article 45.4 of Decree 8/2021, of February 9, on transparency and the right of access to public information, for the purposes of applying Article 15 LTC provides:

"In the case of subsidies and public aid granted by the local administrations to the political groups that are represented there, for their operation, and in accordance with the regulations of the local regime, the local administrations must publicize them in a separate space, containing the following data:

a) The agreement that sets the amount and the elements related to the making of this decision. b) The annual amount and the beneficiary political groups. c) The object of the grant and the legal prohibitions on the destination of these funds provided for in current regulations. d) The information relating to the justification or retention of accounts and/or financial control procedure, or evidence of its non-existence. e) The declaration of each beneficiary group of the detailed list of annual expenses financed by these funds, grouped by specific concepts."

In this sense, access to this information would allow the claimant to verify what the amounts paid to each of the groups would have been and if these correspond to the financial endowments previously recognized by the General Assembly of the Corporation, information that could be relevant for transparency purposes in the control of the management of municipal public resources. In this case, there is no disadvantage from the point of view of data protection regulations in the delivery of this information.

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For the purposes of transparency, there does not seem to be any doubt about the relevance it can have for citizens, having the information that allows them to know what the municipal political groups are spending the funds they receive from the corporation's budget. With this information the citizen could form a critical opinion on the destination that each of the different political groups makes of the money coming from taxpayers. However, the question that needs to be raised is whether, in order to achieve the purpose of transparency, it is necessary to access the personal information that may be contained in the documentation to which it is intended to be accessed.

Specifically, with regard to the different invoices justifying these expenses, there is no information available on what personal data they might contain.

Now, taking into account the provisions of Royal Decree 1619/2012, of November 30, which approves the Regulation regulating invoicing obligations (specifically articles 6 and 7), it must be considered that the invoices in general, they will contain, at a minimum, the data corresponding to the invoice number, the date of issue, the name and surname, the name or full company name, both of the person obliged to issue the invoice and the recipient of the operations; the NIF; the address of the obligee and the addressee, among others. In the case of simplified invoices, they will include, among others, the NIF, the name and surname, as well as the company name or full name of the person obliged to issue it.

In general, and to the extent that the funds received by the political groups should be used for operating expenses, the range of expenses that could have been made with this money is wide. It can range from the purchase of office equipment, the rental of premises to carry out the group's activity, the organization of advertising campaigns, the hiring of external professional advice, to the payment of representation expenses (diet, travel, lunches, etc..).

This information, on the one hand, could provide information on the activity of specific councilors who are members of the group, depending on what information is contained in the justifications

(e.g. lunch of a certain councilor with another person in a certain restaurant) or that, without the need for their direct identification, can be related to a specific person (for example, in the case that the group politician is formed by a single person). But, on the other hand, it could provide information on third-party individuals who may have been hired to perform a service (for example, if a professional was hired for external advice).

Thus, in the case of expenses that are recorded as imputable to the activity of a certain councilor, the data protection regulations would not prevent access to this information. From the point of view of the councilor who may be affected, it must be taken into account that these people hold public positions, have and use, with a wide margin of discretion, public money that should be intended to cover expenses of functioning of the group of which they are part, and therefore linked to the public purpose they pursue. The need to control this margin of discretion in relation to the use of public funds can justify access to this information.

However, with regard to the information that may affect the councilors who are members of the group, in the case of representation expenses (travel, lunches, etc.) it would be advisable to limit this information to the minimum content to comply with the purpose of controlling the destination of the funds received by political groups. For example, with regard to the information about the lunches that a councilor has attended, due to his representative function, this information could contain the names of the restaurants, the amounts paid, etc., but it would not be necessary to provide, for example, the information about the types of menus you have requested, or other information that allows you to analyze or establish certain aspects related to, for example, your health, your personal preferences or establish non-pertinent behavioral guidelines to achieve the intended purpose. Thus, the degree of interference with the privacy of the councilor would be much lower and would undoubtedly respect the principle of data minimization. In the case of travel, to take another example, it would not se

With regard to the third physical persons who would not be part of the group and who could eventually be identified in the respective invoices justifying the purchases or services paid for by the political groups, in principle, in the absence of greater concreteness on the reasons for which access is of interest, it seems that it would be information linked to some professional activity (either as a result of providing supplies or the provision of services) so the intrusion into the private lives of these people would be minimum. In this sense, the need for control in relation to the use of public funds can justify access to this information.

In this sense, it should be remembered that in the field of public administration procurement, the information on the identity of the contractors, the subject of the contract and the amount thereof (art. 13 LTC) precisely as a measure of transparency in the use of public funds.

In the case of municipal groups, regardless of the procurement regulations that apply to them and the active advertising obligations they may have, it is clear that in the contracts they have signed using public funds granted by the administration, it also applies the need to justify to the public the use of these funds, with which the

limitation of the right to data protection of third parties with whom they subscribe would be fully justified when the right of access is exercised.

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With regard to the allegation of the claimant regarding the fact that "more than a month has passed without obtaining a response from the corporation", it should be remembered that, in accordance with the provisions of article 35.2 of Law 19/2014, "The right of access cannot be acquired by administrative silence if any of the limits established by this or other laws to have access to public information are met."

Taking into account that the information subject to the claim contains personal data and that therefore a legal limitation applies that must be dealt with by applying the criteria provided for in articles 23 and 24 of Law 19/2014, and that could mean a denial of the 'access to the requested information, the right of access to the claimed information cannot be understood as acquired through administrative silence.

#### conclusion

The data protection regulations do not prevent the claimant from accessing information about the amounts allocated to each group and about the different types of expenditure made by the groups, for the purposes of controlling the destination of the funds they receive. It also does not prevent access to the supporting invoices for expenses that contain personal data of the councilors as well as third parties with whom they have contracted, although it would be necessary to remove from the supporting documents the information that allows to analyze or establish certain aspects related to the life personnel of the person making the expenditure, their personal preferences or establishing certain guidelines of conduct, not relevant to achieve the intended purpose in the terms set out in the legal basis IV.

Barcelona, September 23, 2021