

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 against a professional association for the denial of access to information related to the disciplinary activity of the Association and in respect of one of its members

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 by a citizen against a professional association for the denial of access to information related to the disciplinary activity of the Association and in respect of one of its members.

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 June 3, 2021, a citizen addresses a letter to a professional association, in which he makes some considerations about the damages that in his opinion would have been caused by a person affiliated with this association, the services of which he would have contracted, and on the fact that the association had not adopted measures against this person, following the complaint that he himself would have presented against said member. In this same letter, the citizen asks the professional association for the following information:

- "1. Know the number of disciplinary proceedings at this college and their results.
2. Know the total number of complaints in 2019 (eg) received by the (...) of all colegiados, open files, complaints upheld in part, complaints upheld in full, number of sanctions, administrative appeals against him (...) and their results.
3. To know if a complainant is entitled to demand the opening of a file.
What is the point of complaints to (...), if he systematically dismisses them.
4. Find out if a complainant is entitled to file appeals (replacement and administrative) before a dismissed or poorly regarded complaint.
5. Given that it is impossible to hire a lawyer to act against another lawyer, or against him (...), how and in what way can a complainant claim damages and damages and penalties.
6. How this association justified its legal capacity. And that was very convincing before the (...).
7. Why did the (...) not consider the need to investigate the credentials.
8. How does he or should he act (...) in the face of the suspicion or complaint of an alleged false degree.
9. Evaluation of the complaint letter (say whether or not it belongs to a lawyer) that this person wrote in my defense, with spelling mistakes, without understanding the

insults that he cited, without providing evidence of the alleged and invented insults, without prior conciliation.

10. He has exercised on (...) some reliable verification regarding the origin of his credentials.

11. Has the (...) requested any investigation, with what result?"

The request for information is accompanied by several court documents and a judgment.

2. On September 12, 2021, the applicant, faced with the lack of response to the request for access to the information mentioned in the previous point, submits a claim to the GAIP against the professional association .

3. On September 22, 2021, the GAIP sent the claim to the professional association, 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.

4. On October 14, 2021, the professional association transfers to the GAIP the agreement adopted by the Board of Governors on October 13, 2021 regarding the request for access that is the subject of this claim , in which the report carried out by the Legal Advice of the professional association is transcribed.

In this report, it is argued that the professional association cannot give the applicant most of the information he requests "essentially for two reasons:

a) for the special protection of the data contained in the disciplinary files - or in the actions prior to these that could be carried out - and

b) because the status of an interested person could not be recognized (and even less so when it mentions, not only files initiated following a complaint by the claimant, but all disciplinary files opened (...) in 2019) ."

5. On October 18, 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 governance, in relation to the claim presented.

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.

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

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 an entity

private 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.”

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

The LTC extends its subjective scope of application to, among others, "professional associations and public law corporations in what affects the exercise of their public functions" (article 3.1.b)).

According to article 39 of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, "the public functions of professional associations are:

- a) Guarantee that professional practice complies with regulations, ethics and good practices, and that the rights and interests of the recipients of the professional performance are respected (...).
- b) Ensure the rights and the fulfillment of the duties and obligations of the members and that no acts of intrusion, unfair competition or other irregular actions occur in relation to the member profession, adopting, where appropriate, the measures and actions established by the legal system.
- c) Exercise disciplinary authority over their members, in the terms established by the law and the rules of the professional associations.
- d) (...)"

The claimant requests from the professional association various information related to the exercise of the disciplinary power of the Association and on the organization of the profession, that is, information that refers to the exercise of public functions of the professional college. Therefore, with respect to this information, the professional association is within the scope of application of the LTC, in accordance with article 3.1.b) of this law.

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

The information requested by the person claiming from the professional association linked to the exercise of their public functions is public information for the purposes of article 2.b) of the LTC and, therefore, remains subject to the regime of access (article 18 LTC).

This right of access, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the criteria set out in the transparency legislation, and the principles of the personal data protection regulations.

III

As stated in point 1 of the antecedents of this report, the claimant has requested from the professional association various information related to the professional association's disciplinary activity and the organization of the profession.

From the point of view of data protection, there would be no problem in facilitating access or providing the citizen with the information referred to in their access request that does not contain personal data. We refer specifically to the following information:

"(...)

3. To know if a complainant is entitled to demand the opening of a file.

What is the point of complaints to (...), if he systematically dismisses them.

4. Find out if a complainant is entitled to file appeals (replacement and administrative) before a dismissed or poorly regarded complaint.

5. Given that it is impossible to hire a lawyer to act against another lawyer, or against the (...), how and in what way can a complainant claim damages and damages and penalties.

(...)

8. How does or should the (...) act in the face of the suspicion or complaint of an alleged false degree.

9. Evaluation of the written complaint (say if it is a lawyer's own or not) that this character wrote in my defense, with spelling mistakes, without understanding the insults he cited, without providing evidence of the alleged and invented insults, without prior conciliation.

(...)."

Nor would there be any inconvenience in giving him the information on "the total number of complaints in 2019 (eg) received by the (...) of all his colleagues, open files, complaints estimated in part, complaints estimated in full, number of sanctions, resource contentious administrative proceedings against the (...) and their results" (point 2 of the request) given that, in view of the terms in which it is requested, it would in any case be aggregated information and that, therefore, would not include personal data.

In these cases, as the requested public information does not contain personal data, in the terms of article 4.1) of the RGPD, the data protection regulations would not apply.

Having said that, the claimant's access to the rest of the requested public information containing personal data is then examined.

IV

The person claiming requests the professional association to "know the number of disciplinary proceedings at this association and their result" (point 1 of the request).

Law 7/2006, already cited, recognizes professional associations with disciplinary power over their members (article 15, in relation to article 26.b)) as well as the normative power to develop the disciplinary regime that the rule itself provides for it (articles 20 and 42).

In the professional field of law, context in which we find ourselves, it is necessary to take into account Resolution JUS/110/2019, of January 22, amending the Regulations of the Catalan Bar of the Consell dels Il·lustres Col··l·egats de la Barriera de Catalunya (hereafter, the Catalan Bar Regulations), which provides for the disciplinary regime from articles 60 et seq.

The current statutes of the professional association include the power of the Governing Board to sanction both its members and the persons qualified as members by this Board and the professional societies (article 110.1) .

Taking into account that we are faced with possible disciplinary sanctions imposed in exercise of the public functions attributed to professional associations, we are faced with a request for public information that contains information relating to administrative infractions, in this case of a disciplinary nature.

Article 23 of the LTC establishes that "requests for access to public information must be refused 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 offenses that do not entail a 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 the LT, in its wording given by the eleventh final provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) , provides (second paragraph) that "if the information includes personal data that refers to racial origin, health or sexual life, includes genetic or biometric data or contains data related to the commission of criminal or administrative offenses that do not entail the public admonition to the offender, access may only be authorized if the express consent of the affected person is obtained or if he or she is protected by a rule with the force of law."

In relation to consent, article 70.1 of the RLTC states that "it corresponds to the person requesting to provide the express and written consent of the persons holding the personal data affected by the requested access. The public administrations can transfer the request and the consent to the person holding the data in order to certify the written consent provided, in case of doubt about its veracity.

Given what has been stated, to the extent that knowing the disciplinary history of the person enrolled in the professional association to whom the request for information refers entails knowing information relating to the commission of administrative infractions, and not constant in the file

provided that the person making the claim has the express written consent of that person, access to this information must be denied.

v

The claimant also requests from the professional association information on "how this association justifies its legal capacity. And that was very convincing before the (...), "why the (...) did not consider the need to investigate the credentials", "has the (...) exercised some reliable verification regarding the origin of his credentials" and "has requested (...) some investigation, with what result" (points 6, 7, 10 and 11 of the request).

This information, as can be seen from the file sent, is related to one or several previous proceedings carried out by the professional association against the member to whom the request for information refers, following the complaints presented against his person by the person now claiming. These complaints, as can be seen from the application for access, refer to an alleged lack of professional capacity on the part of the collegiate person, particularly questioning the authenticity and validity of his academic degree.

The Regulations of the Catalan Bar expressly provide for the possibility that the competent body, before agreeing to start a disciplinary file, may agree to carry out preliminary proceedings or actions in order to determine whether there are circumstances that justify the initiation of the file (article 89.2).

This Authority has stated in previous reports (among others, IAI 43/2020, IAI 26/2020 or IAI 10/2020) that, taking into account that the purpose of these previous actions is to determine on a preliminary basis whether they concur or not the circumstances that could 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 take it to term and may imply a limitation to the right of access to the owner of the data 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 Court Superior of Justice of Madrid (TSJM)).

In other words, while the previous information is being processed, its reserved nature must prevail and neither the person making the claim nor the person affected by the access - in this case, the collegiate person has the right to access its content. This would cover both the information on your person contained in the documentation or information that forms part of the preliminary proceedings, despite the provisions of article 15 of the RGPD, as well as that other information referring to third parties.

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)).

However, once this phase of investigation concludes, its reserved or confidential nature may lapse (STSJM 471/2006, of May 24). In the present case, it is stated in the file sent that the preliminary proceedings opened by the professional association to investigate

the facts reported by the person now making a claim have ended with their archive, as no disciplinary offense was committed by the collegiate person.

In view of this, it is necessary to examine the access requested by the person claiming with respect to the information of the collegiate person that may be contained in these previous actions, in accordance with what is established in articles 23 and 24 of the LTC.

VI

Regarding the information related to "why the (...) has not considered the need to investigate the credentials", "has the (...) exercised some reliable verification regarding the origin of his credentials" and "has requested the (...) some investigation, with what result" (points 7, 10 and 11 of the request), which, as has been said, would be related to one or several previous proceedings opened by the professional association against the member to whom the request for information refers and which would have ended with its archive, it is important to point out that, 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 a serious harm in their privacy, particularly, in attention to the nature of the facts investigated. 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 to this information.

Article 23 of the LTC only allows access to information relating to the commission of offenses by third parties with the express written consent of the persons affected by the requested access. Article 70.1 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.

In accordance with the jurisprudence, the reporting person has a legitimate interest in order to be considered interested to the extent that the resolution of the administrative file can produce a positive effect in his legal sphere, or eliminate a burden or encumbrance. However, in accordance with article 62.5 of Law 39/2015, of October 1, on the common procedure of public administrations (LPAC), the presentation of a complaint does not confer, by itself, the status of an interested party in the procedure. Thus, article 64.1 of the LPAC provides that the initiation of the sanctioning procedure will only be communicated to the complainant when the rules governing the procedure so provide.

Article 60.1.b) in relation to article 61 of Law 7/2006, empowers the Council of Colleges of Lawyers of Catalonia to draw up the rules relating to professional practice and the regime

disciplinary common to the profession. The Superior Court of Justice of Catalonia, in its Judgment 843/2011, of December 13, issued by the Fifth Section of the Administrative Litigation Chamber, confirmed this competence of the Council to approve these rules.

In development of this legal provision, the Council of the Catalan Bar approved the Regulations of the Catalan Bar, which have already been mentioned above, as basic and fundamental regulations that must govern the exercise of the legal profession in Catalonia.

Article 91.2 of the Regulations of the Catalan Bar provides that the decision to file the previous actions must be notified to the people who have filed the complaint and to interested in the appropriate effects.

Therefore, the person making the claim can have the file resolutions of the previous proceedings carried out by the professional association following their complaints presented against the member and, consequently, would have certain information about the reasons why it would have been decided not to open a disciplinary file. These elements which, in terms of transparency, already allow the claimant to control the action of the professional association in this matter.

VII

Regarding the information consisting of "how this collegiate justified his legal capacity. Y que fue muy convincente ante el (...)" (point 6 of the request), because it is not information that could be qualified as deserving of special protection, the access of the person claimant requires a prior weighting reasoned between the different rights and interests at stake, in accordance with article 24.2 of the LTC.

This article provides that 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 disclosure and the rights of individuals affected To carry out this weighting, the following circumstances must be taken into account, among others:

"a) The elapsed time. b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people. (...)."

In accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses what is the purpose he pursues and ultimately the reasons for which he is interested knowing the information adds a very important element to be taken into account as a weighting criterion between the public interest in the disclosure of the information and the rights of the people affected.

In the present case, the claimant makes, in his request for access, some considerations about the damages that would have been caused to him by the collegiate person affected by the access, whose services he would have hired for the defense of their interests In

specifically, it questions the qualification of the person admitted to practice the profession of lawyer and in particular the validity of his degree. In this regard, he claims that this person's university degree could have been obtained by fraudulent means.

The private or particular dimension of the right of access to public information is specified in allow people to access information that may be of interest to their particular sphere of interests and, in this sense, the purpose of access plays an essential role when weighing between the two rights at stake. In fact, the particular interest that can be pursued by the citizen with the access is provided as a weighting criterion in article 15.3.b) of the LT, by expressly establishing that it is necessary to take into consideration "the justification by the applicants of their petition in the exercise of a right (...).

At the outset it must be said that there is no disadvantage in giving the person claiming the information on whether this person is qualified to practice the profession of lawyer, that is about their professional qualification situation or your degree, as this is information that, in accordance with article 40 bis of Law 7/2006 and article 10.2 of State Law 2/1974, of February 13, on colleges professionals, the professional association must make citizens aware of it, through the single window in the Register of members, for the best defense of their rights as consumers and users.

Regarding the degree, it is true that the Law does not specify that the University where the degree was obtained or the year must be stated, but it is information that can easily be understood included in the provisions relating to the single window .

The dissemination of this data and the rest of the data of the members referred to in the aforementioned articles, expressly provided for by the legislator, is considered essential to achieve the public purposes of the professional associations, given that it allows the organization of the profession, protects professionals against intrusion and makes known which professionals meet the legally established requirements for the exercise of the profession (article 39 Law 7/2006), an objective that corresponds to the purpose intended by the claimant person

However, the information requested may go beyond the mere information on the professional qualification or not of the person concerned and the qualification, which has been mentioned, given that it may also include other information such as the approval of degrees or the fulfillment of other requirements necessary for practicing the profession of lawyer.

Article 5 of Law 7/2006 regulates access to the exercise of a qualified profession in the following terms:

- "1. In order to access the exercise of a qualified profession, you must have the corresponding academic degree and meet, if applicable, the other qualifying conditions established by law.
2. The conditions for professional recognition of qualifications and equivalence of conditions set by Community regulations must be respected in all cases.
3. Access to professional practice may be conditioned, if so established by a law and under the terms it provides, to a previous practical training or to the obtaining of an aptitude accreditation, with the participation of the professional colleges and universities."

Law 34/2006, of 30 October, on access to the professions of lawyer and court solicitor, aims to regulate the conditions for obtaining the professional title of lawyer and the professional title of court solicitor, as collaborators in the exercise of the fundamental right to effective judicial protection, in order to guarantee citizens' access to a advice, legal defense and quality technical representation (article 1.1).

Article 2 of this Law establishes the following in relation to the accreditation of professional capacity:

- "1. The persons who are in possession of the university degree in Law or the Degree in Law and who accredit their professional qualification by passing the corresponding specialized training and the evaluation regulated by this Law.
2. The specialized training necessary to be able to access the evaluations leading to the obtaining of this professional title, is a regulated and official training that will be acquired through the completion of training courses jointly accredited by the Ministry of Justice and the Ministry of Universities, after the autonomous communities have been heard and in the manner determined by the regulations.
3. The professional title regulated in this Law will be issued by the Ministry of Justice or by the corresponding bodies of the autonomous communities that have assumed executive competence in the matter of issuing professional titles."

The request for the information mentioned by the person making the claim, in view of the information available, would aim to check whether the legal person who represented him in the defense of his interests at a given time was qualified to exercise the profession of lawyer, which includes meeting the requirements provided for legally in this regard, such as having the university degree of the degree or the degree in law and, where appropriate, the corresponding approval, as well as, from of the entry into force of the provisions of Law 34/2006, passing a specialized training and a professional aptitude test.

Providing this type of information about the collegiate person would lead to an interference with their right to data protection, given that it would allow the person making the claim to know certain personal information. But it must be borne in mind that these are aspects linked to his professional activity and, more specifically, to the fulfillment of the requirements to exercise it, with which the effect on his personal life would be less, given that it can be assumed that anyone practicing the profession must comply with them.

Taking into account the concurrent circumstances in the present case, in which the claimant would have been harmed, as he states, by the actions of this collegiate person and that the information requested refers to the main requirement that s must fulfill in order to practice the profession, it must be considered that the right of access of the person claiming to the aforementioned information should prevail over the right to data protection of the affected collegiate person.

conclusion

The person making the claim cannot access the disciplinary history of the member referred to in their request, although they can have the archived resolutions of the previous proceedings that the professional association has carried out term against this member in which the person claiming has been the complainant.

You can also be provided with the information relating to the academic qualification that this registered person has, including the university and year in which he completed his studies, and if appropriate the approval and other requirements to exercise the profession, in attention to the circumstances concurrent

Barcelona, November 2, 2021

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