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Report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against a department of the Generalitat for the denial of access to the sanctioning files in the petrochemical sector industries of Camp de Tarragona and Flix for environmental issues between the years 1975 and 2021 (both inclusive).

The Commission for Guaranteeing the Right of Access to Public Information (GAIP) asks the Authority Catalan Data Protection Authority (APDCAT) to issue a report on the complaint filed against a department of the Generalitat for the denial of access to the sanctioning files in the petrochemical sector industries of Camp de Tarragona and Flix for environmental issues between the years 1975 and 2021 (both inclusive).

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, I inform you of the following:

Background

1. On July 4, 2021, a request from a citizen, in his capacity as a journalist and resident of the city of Tarragona, was submitted in the registry of the Generalitat of Catalonia, for the which asks to consult "the records of sanctions in the petrochemical sector industries of Camp de Tarragona and Flix for environmental issues between the years 1975 and 2021 (both inclusive)".
2. On August 9, 2021, the department decides to partially approve the request for access to public information submitted on 07/04/2021 and provide the applicant with:

"For the above, although it is not possible to provide access to the documentation of the files with the scope and in the conditions and format in which it has been requested, (...) it is available to provide a list of the identification information of the identified firm sanctioning files, with an indication of the name of the company, the date of initiation and firmness of the sanction and its amount. In this sense, the information will be delivered in a different format than the one requested (excel), in accordance with the provisions of article 36.2 of Law 19/2014, of December 29, which allows the provision of information in an alternative format to the one requested, when it is more reasonable for the efficient management of public resources."

3. On August 20, 2021, the information requester submits a claim to the Commission for the Guarantee of the Right of Access to Public Information (GAIP), for the partial denial of access to public information, in which he states that "I requested the consultation of the sanctioning files of the petrochemical companies of Tarragona and Flix and the Generalitat only offers me a list of the sanctions. I ask to consult the files, but the Generalitat says that these are in different departments of the administration and that the volume requested (it has been requested since 1975) is too large. I am aware that I am asking for many years and that

they can be many files. But this documentation is key in the research I'm doing (I'm a journalist) and I will agree to consult it gradually and in person if that's the case."

4. On August 24, 2021, the GAIP requests the department to issue a report on the claim submitted, identify the third parties affected by the access, send the complete file to which it refers and indicate the person or people who will represent the Department at the mediation session.

5. On September 21, 2021, the department issues a report regarding the access request in which it states that "This reason for inadmissibility is present given that obtaining information from administrative files is a particularly difficult task complex that involves a disproportionate and unacceptable workload for the units involved and that with the limited personal resources available could affect the normal functioning of the units responsible for these files. With regard to these tasks, he emphasizes that once the files are in digital format, it would be necessary to carry out "the task of anonymizing the files - which would also have to be carried out in the event that face-to-face access to the files is facilitated - it would mean reviewing one by one each of the documents that make up the more than 148 files. This concealment of personal data and handwritten signatures is estimated to mean spending an average of 2 more hours per file, with a total time cost of approximately 296 hours.

6. On October 19, 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 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 by means of an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of

the physical, physiological, genetic, psychological, economic, cultural or social identity 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 movement of such data and which repeals Directive 95 /46/CE (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

The claimant requests access to "the files on sanctions in the petrochemical industry of Camp de Tarragona and Flix for environmental issues between the years 1975 and 2021 (both inclusive)".

From the perspective of data protection regulations, it is necessary to start from the basis that the RGPD, in accordance with its articles 2 and 4.1, is applicable to the treatments that are carried out on personal data understood as any information "about 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". (Article 4.1 RGPD).

It must be taken into consideration that the data of legal entities are excluded from the scope of protection of the RGPD, as specified by the RGPD itself, by establishing that "The protection granted by the present Regulation must be applied to natural persons, regardless of your nationality or place of residence, in relation to the processing of your personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details.

(Recital 14)

Thus, the regulations for the protection of personal data will be relevant with respect to information relating to companies that are natural persons (individual entrepreneurs) owners of industries of the

petrochemical sector of Camp de Tarragona and Flix that have been the subject of an action penalty by the environmental administration.

On the other hand, the claimed information referring to companies established as legal entities, is excluded from the scope of protection of the data protection regulations personal Therefore, from the point of view of personal data protection regulations, there would be no problem in being able to access it.

However, in his request the applicant expressly states that he wants access to the sanctioning files. It can be foreseen that these files may not only contain data on the legal entities responsible for the events but also on natural persons acting on behalf of the legal entities. Similarly, the files may also include data from third parties, such as the public employees in charge of processing the files (inspectors, instructors, competent public officials, etc.), as well as third parties who may have intervened as whistleblowers, witnesses, etc. . In the event that they are natural persons, the processing of this personal information would be protected by data protection regulations.

In accordance with the definition of treatment in article 4.2 of the RGPD "consultation, use, communication by transmission, dissemination or any other form of enabling access, access or interconnection, limitation, deletion or destruction " of personal data, are data treatments subject to the principles and guarantees of the RGPD. Therefore, access by the requesting person to the completed files claimed would involve processing personal data under the terms of the RGPD.

The RGPD 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 RGPD 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 responsible for the treatment".

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

At the same time, 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, 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."

From all this it follows that the claimant's access to personal data that may contain the information requested on the basis of the fulfillment of a legal obligation by the department (responsible for the treatment (art.6.1.c) RGPD), must necessarily be protected by a rule with the rank of law.

According to article 18 of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal entity" (paragraph 1).

For the purposes of article 2.b) of the LTC), public information is "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".

It should be taken into account, however, that the second section of the first additional provision of the LTC provides that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, with additional character, by this law.

The environment is a matter with a special regime of access, regulated mainly by Law 27/2006, of 18 July, which regulates the rights of access to information, public participation and access to justice in environmental matters (hereafter LAIA).

The application of this specific regulation to the case at hand depends, basically, on whether the claimed information must be considered included within the concept of environmental information, for the purposes of the LAIA.

Article 2.3 of the LAIA defines "environmental information" in the following terms:

"3. Environmental information: all information in written, visual, audio, electronic or any other form regarding the following issues:

- a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscapes and natural spaces, including wetlands and marine and coastal areas, biological diversity and its components, including genetically modified organisms; and the interaction between these elements.
- b) The factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, spills and other releases into the environment, that affect or may affect the elements of the environment mentioned in letter a) .
- c) Measures, including administrative measures, such as policies, rules, plans, programs, environmental agreements and activities that affect or may affect the elements and factors mentioned in letters a) and b), as well as the activities or the measures intended to protect these elements.
- d) Reports on the execution of environmental legislation.

- e) The analyzes of the cost-benefit relationship and other analyzes and assumptions of an economic nature used in decision-making regarding the measures and activities cited in letter c), and
- f) The state of health and safety of people, including, as the case may be, contamination of the food chain, human life conditions, assets of historical, cultural and artistic heritage and constructions, when they are or may be affected by the state of the environmental elements mentioned in letter a) or, through those elements, by any of the extremes mentioned in letters b) and c)."

From the literal tenor of the precept it can be inferred that the legislator wanted to give the concept of information environmental in a broad sense, which, in accordance with the jurisprudence of the TJCE (for all, the STJCE of June 17, 1998, case 321/96, Mecklenburg), would cover "any information relating to the state of the different elements of the environment that are mentioned there (in article 2.a) of the Directive), as well as activities or measures that may affect or protect the state of said elements, including administrative measures and environmental management programs. (...) using the term "measures" only to specify that among the acts contemplated by the Directive must be included all forms of exercise of administrative activity".

In view of this broad interpretation of the European Court of Justice, it seems that the information relating to the files processed by the department in relation to the pollution by the petrochemical industries of Camp de Tarragona and Flix, could be considered environmental information to which to apply the special access regime regulated in the LAIA, without prejudice to the fact that, where not provided for by this law, the LTC would additionally apply, in accordance with its first Additional Provision.

III

Article 3 of the LAIA establishes that anyone can access environmental information held by public authorities or that of other subjects on their behalf, without being obliged to declare a specific interest.

The right of access to environmental information is not configured as an absolute right of the applicant, but, as established in article 13 of the LAIA, is subject to a regime of exceptions that the public authority can invoke to deny the request. Specifically, with regard to personal data, section 2.f) provides that requests may be denied if the disclosure of the requested information may negatively affect "the confidential character of the personal data, as y as regulated in Organic Law 15/1999, of December 13, on the Protection of Personal Data, provided that the person concerned has not consented to its treatment or disclosure." (article 13.2.f). This reference to the regulations on the protection of personal data must be understood today as referring to the RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) and RGPD

However, LAIA itself expressly requires that the reasons for denying access to environmental information be interpreted restrictively and that, in each specific case, a

weighting between the public interest that would be served by disclosing the information and the interest that would be served by denying access to that information (article 13.4).

From the perspective of data protection regulations, access to environmental information will have to be restricted when it affects data considered particularly sensitive, under the terms of article 9 of the RGPD (data that reveal the origin ethnic or racial, political opinions, religious or philosophical convictions or trade union affiliation, genetic data, biometric data intended to uniquely identify a natural person, data relating to health or data relating to sexual life or orientation sexual data of a natural person), or other data that, despite not being included in this category, have in Spanish legislation a reinforced system of protection as would, in the case at hand, data relating to infringements and administrative or criminal penalties.

As for the elements to be taken into consideration in weighing up the public interest in access to environmental information and the protection of personal data with regard to the persons responsible in the sanctioning proceedings instructed by the environmental administration, it is necessary to have considering that information relating to administrative or criminal offenses and sanctions is subject to a reinforced system of protection.

This special protection derives from article 27 of LOPDGDD which establishes:

"1. Pursuant to Article 86 of Regulation (EU) 2016/679, the processing of data related to administrative infractions and sanctions, including the maintenance of records related to them, will require:

a) That those responsible for said treatments are the competent bodies for the instruction of the sanctioning procedure, for the declaration of the infractions or the imposition of the sanctions. b) That the treatment is limited to the data strictly necessary for the purpose pursued by that.

2. When any of the conditions provided for in the previous section are not met, the data treatments referred to infractions and administrative sanctions must have the consent of the interested party or be authorized by a rule with the force of law, in which they will be regulated, where applicable, additional guarantees for the rights and freedoms of those affected.

3. Apart from the cases indicated in the previous sections, the processing of data related to infractions and administrative sanctions will only be possible when they are carried out by lawyers and attorneys and have the purpose of collecting the information provided by their clients for the exercise of their function."

This protection is also included in the regulations on access to public information (although it is not directly applicable in the present case). Thus article 23 of the LTC establishes that "Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union membership, religion, beliefs, racial origin, health and sex life, and also the

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."

It is worth saying that this protection must be extended to those investigative actions that are part of a previous information carried out by the competent administration and that have not ended in a disciplinary file. In these cases, as this Authority has previously highlighted, the association of the natural person with facts likely to be the subject of a disciplinary file that has finally been filed have an impact on his personal and professional reputation that require also, and with more reason, of a special protection.

In the case at hand, it should be noted that there is no evidence that the consent of the potentially affected persons has been provided so that said information can be disclosed (article 13.2.f) LAIA). For this will have to exclude access to files of a disciplinary nature or information prior to a disciplinary file.

However, it must be taken into account that the specific legislation on the environment establishes sanctions that involve the publication of the offender's data, as would be the case, for example, of the very serious offenses specified in Law 20/2009, of December 4, on prevention and environmental control of activities, which in its article 83 provides that in the case of very serious infractions of those typified in its article 80 (relating to the exercise of activities without the corresponding authorizations or breaching the conditions imposed when damage to the environment has occurred) may result in the imposition of a penalty consisting of the "Publication, using the means deemed appropriate, of the penalties imposed, once they have acquired determination by administrative or, where applicable, jurisdictional procedure, and also the name, surnames or denomination or company name of the natural or legal persons responsible and the nature and nature of the infractions tions" (article 83.a).5).

Therefore, access to the environmental information requested by the claimant referring to natural persons as responsible or presumed responsible for water pollution violations, should be limited on the basis of what is provided for in article 13.2.f) of the LAIA and the data protection legislation (article 10 RGPD and article 27 LOPDGDD), except in the case of disciplinary proceedings in which a sanction has been imposed, for a very serious infringement, consisting the publication of the data of the person responsible for the infringement, since in this case the regulations governing this provision would be the enabling legal norm for its communication in the terms of article 27.2 of LOPDGDD. In those cases where the penalty of publication has been imposed, the information relating to the offense committed and the penalty imposed could be given, identifying the person responsible although access to the complete file will have to be excluded.

On the other hand, from the point of view of the public interest in access to this environmental information, there is no denying the interest that may have in knowing if the environmental administration has instituted disciplinary proceedings for pollution in the environment, and more so in a case like the one we are dealing with in which the person claiming identifies himself as a journalist and expresses an interest in accessing this information for a journalistic investigation he is carrying out. However, this purpose could also be achieved without violating the special protection of the personal data of those responsible for administrative or criminal offenses provided for by the regulations

analyzed, if the information were facilitated so that the affected people are not identifiable.

In addition, to the extent that the environmental regulations allow access to information on emissions in the environment (article 13.5 LAIA). without the environmental authority being able to object for reasons relating to the protection of the privacy of those responsible, obtaining on the part of the claimant of this information on emissions in the environment in addition to the aggregated information relating to the sanctioning files, they would allow him to achieve the purpose of controlling the actions of the environmental administration without sacrificing the privacy of the offenders when they are physical persons

In this sense, the data protection regulations would not prevent the provision of aggregated information on the number of disciplinary proceedings processed in a certain area or period, as long as the affected individuals are not identifiable.

To determine if a natural person is identifiable "must be taken into account all the means, such as singularization, that can reasonably be used by the controller or any other person to directly or indirectly identify the natural person.

To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment as technological advances" (consideration 26 RGPD).

IV

With regard to the information relating to third parties that may be contained in the files sanctioning legal entities, it can be foreseen that the files claimed contain personal data of the public employees in charge of processing the files (inspectors, instructors, competent public positions, etc.), but also of the natural persons who have acted in the name and representation of the companies as well as third parties who have been able to intervene as complainants, witnesses etc. In order to determine whether this personal information can be accessed, it will be necessary to weigh the interests at stake provided for in article 14.4 of the LAIA. This section does not refer to the data of third parties that may appear in sanctioning files processed for natural persons, because in this case, as we have already explained, access to this type of file would have to be excluded.

As stated, in accordance with Article 13.4 of the LAIA, the grounds for refusal provided must be interpreted restrictively. To this end, it is necessary to carry out a weighting in each specific case between the public interest that would be served by disclosing the information, with the interest that would be served by denying it. Regarding the data of public employees that may appear in the requested information, when making the weighting it must be taken into consideration that the identification of these is carried out within the framework of their relationship and the services they provide in the public administration, in such a way that access to their data is directly related to their public functions.

It does not seem that the disclosure of this type of information entails, in general, a special impact on the right to data protection, taking into account the duty of public employees to identify themselves in the files in which they intervene.

Therefore, apart from exceptional cases in which it is necessary to preserve the privacy of these due to the personal situation that any of these workers has revealed, in principle there should be no impediment to facilitate access to information that contains merely identifying data (name and surname) of employees or public officials.

The information requested may also contain information about the natural persons who have acted in the procedures on behalf of the legal entity.

In this case, in order to weigh up the public interests at stake, it must be taken into account that given the extensive time period covered by the request (since 1975) it can be predicted that a significant number of these representatives no longer provide their services in those companies. From the point of view of the protection of the privacy of these people, the fact that they may be related to disciplinary or investigative files in relation to the company in which they may no longer provide services, may cause damage in the his professional and even personal sphere.

On the other hand, the public interest in the disclosure of this information from an environmental point of view is very low and, on the other hand, the disclosure of this information may have negative effects on your privacy, insofar as it is seen related to facts that have to do with the commission of administrative infractions or that may even have resulted in criminal responsibilities with respect to legal entities, in which their participation has been solely as legal representatives.

Therefore, the identification data of these third parties that appear in the files as representatives of the legal entities given the limited public significance of the information for environmental purposes and the harm to their privacy must be preserved from their disclosure

Finally, the claimed files may contain information from third parties who, for some reason, have intervened in the file, for example as complainants, interested parties or witnesses.

In principle, it does not seem that the information relating to these people that may appear incidentally in the requested files is relevant to guarantee the public interest in access to environmental information. On the other hand, it can be foreseen that the people who bring to the attention of the administration facts that may constitute an administrative or criminal offense, or who intervene in the procedure as witnesses, do so with expectations of privacy for so that your personal information is not disclosed to third parties. On the contrary, the disclosure of their identity could have negative consequences for these people both in their professional and personal spheres.

Therefore, with regard to this information, it should be omitted from the requested files.

conclusion

The claimant must be excluded from access to the sanctioning files provided by the environmental administration in which the person responsible for the pollution is a natural person, even though access to the offense committed may be given, the sanction imposed and the infringing subject, when a publication penalty has been imposed for a very serious infringement. The data protection regulations do not prevent access to information on sanctions on legal entities or aggregate information on those imposed on natural persons that does not allow them to be identified. With regard to the data of third parties that may appear in the sanctioning files that can be accessed, it is necessary to anonymize the personal data of third parties (legal representatives, complainants or witnesses) that may appear there, except for the people who have intervened by reason of his office.

Barcelona, November 4, 2021

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