

IAI 72/2021

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim presented for the denial of access to information about certain professionals of a public company that provides emergency care services medical

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 for the denial of access to information about certain professionals of a public company that provides emergency medical care services.

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 July 19, 2021, a citizen wrote to a public company that provides medical emergency care services, requesting the following public information:

"1. Which professionals were part of the call sign (...), last March 30, 2021 at 10:00 p.m. and 11:00 p.m. at night.

2. Notices received by the unit (...), on March 30, 2021 between 9:00 p.m. and 11:00 p.m.

3. Protocol, circular, order, regulation or document of a different nature of action in situations in which the patient presents psychomotor agitation or psychotic outbreak, or in cases of intervention in people who show obvious mental health problems, in public or in environments of various nature outside the hospital or a health center."

2. On August 16, 2021, the public company issues a partial estimate resolution for access to the requested public information in the following terms:

"1. Partially estimate the request for access to public information submitted on 07/19/2021 with procedure code 66XJSH82D.

2. Provide the information related to "Protocol, circular, order, regulation or document of a different nature of action in situations in which the patient presents psychomotor agitation or psychotic outbreak, or in cases of intervention in people who show obvious health problems mentally, on public roads or in environments of various nature outside the hospital or a health center", in the format that was requested, which is contained in the annex to this resolution."

3. On September 22, 2021, the applicant filed a claim with the GAIP against the public company for denial of access to the requested public information.

4. On October 4, 2021, the GAIP sent the claim to the public company, requiring it to issue a report on which to base its positions, as well as the complete file relating to

the request for access to public information and the identification of third parties affected by the requested access.

5. On October 18, 2021, the public company transfers to the GAIP the complete file relating to the request for access to public information that is the subject of this claim.

This file contains the report issued by the head of the Public Company's Legal Advice and Contracting Area, which sets out the following:

"(...) we understand that the request for "which professionals" were part of an indicator on a specific day and time (between 10:00 p.m. and 11:00 p.m. on March 30, 2021) implies the transfer of the affiliation data of these workers and it has been assessed that the protection of personal data of these professionals must prevail.

The obligation to identify them is restricted to the effective accreditation by the applicant that he is an interested person in relation to the specific service that motivates the request for the identification of the professionals (which should be the patient, a representative, an authorized family member or an heir).

The notices received by the unit (...) on March 30, 2021 in a two-hour period would also involve the transfer of personal and/or health data of people served by this unit.

In addition, in this case, the transmission of information and "merely identifying data" of specific professionals during a specific hour and "merely identifying data" of the assistance provided by this specific unit during two hours of this day, even without including personal data, can lead to the identification of patients and pathologies, that is to say it can indirectly lead to access to personal and health data of natural persons contrary to the purpose provided for in the protection regulations of personal data."

6. On October 21, 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 data protection

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 a private entity for the performance of a mission in the public interest may be communicated by said authority, organism or entity in accordance with the Law of the Union or Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

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

Article 3.1.b) of the LTC extends its subjective scope of application, among others, to commercial companies in which one of the public entities referred to in the same article has a majority stake, among which, the Administration of the Generalitat.

And article 2.f) of the LTC, and exclusively for the purposes of the application of this Law, qualifies as public administration the instrumental bodies of the public sector referred to in article 3.1.b).

The claimed entity, in accordance with its Statutes, is constituted (...) as a commercial company, in the form of a limited company, which has its own legal personality and adjusts its actions to private law (Article 1) . Therefore, it is fully within the ambit of the LTC.

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 to (...) subject of this claim is public information for the purposes of article 2.b) of the LTC and, therefore, remains subject to the access regime (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

The claimant has requested from the public company "which professionals were part of the code (...), last March 30, 2021 at 10:00 p.m. and 11:00 p.m. at night".

Regarding requests for access to public information that does not contain data deserving of special protection, article 24 of the LTC provides the following:

"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 the protection of personal data or other constitutionally protected rights must prevail. 2. (...).”

This article of the LTC allows access to the merely identifying data of public employees who intervene due to their functions in the different procedures or public actions carried out by the Administration, unless there are specific circumstances that justify the prevalence of the right to the protection of data of the person or persons affected or other constitutionally protected rights.

Article 70.2 of the RLTC specifies what is meant by merely identifying personal data in the following terms:

“For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and addresses, postal and electronic, of professional contact, referring to staff in the service of public administrations, senior positions and managerial staff in the public sector of public administrations.

In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature.

If the signature is electronic, the electronically signed document must be published in such a way that the properties of the electronic certificate used for the signature cannot be accessed.

The location data must be deleted in the event that it is not merely identifying data of the author in his position of position or staff in the service of public administrations.”

Therefore, in consideration of the transcribed articles, facilitate the access of the person claiming to the merely identifying data of the public company professionals who were part of the action referred to in the access request, in the terms indicated, in principle would not be contrary to the right to the protection of personal data. This, unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

In this sense, it must be borne in mind that, beyond the public company expressing its refusal to deliver this type of information to consider that the right to data protection of its professionals should prevail, the information provided is not there are reasons or circumstances from which it can be seen that this right to data protection of those affected, or another constitutionally protected right, must certainly prevail over the claimant's right of access, to the extent that no personal circumstances are proven to justify it.

Therefore, in the absence of having the allegations that could have been formulated by the affected persons - to whom the request and/or the agreement claim should have been forwarded

with articles 31 and 42 of the LTC-, under article 24.1 of the LTC it is necessary to recognize the right of the person claiming to access the information they request.

IV

The claimant has also requested from the public company the "notices received by the unit (...), on March 30, 2021 between 9:00 p.m. and 11:00 p.m."

According to your letter of complaint, it is in your interest to know "how many notices were received" for this public company code on the day and time slot specified.

From the point of view of data protection, there would be no disadvantage in giving the person claiming this information, given that, given the terms in which it is requested, it would in any case be aggregated information and that, therefore, it would not include personal data. Given the terms of the request, this information should in no case include information that allows the persons served to be identified.

In this case, as the requested public information does not contain personal data, in the terms of article 4.1) of the RGPD, the data protection regulations do not apply.

conclusion

In view of the information available, it is necessary to recognize the right of the person claiming to access the merely identifying data of the professionals of the public company who carried out an action on March 30, 2021 from 10:00 p.m. to 11:00 p.m. h, as well as the number of notices received by this code on the same day between 9:00 p.m. and 11:00 p.m.

Barcelona, November 4, 2021