

IAI 73/2021

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against a City Council for the denial of access to urban inspection acts carried out by the Local Police and the Municipal Technical Services between April 1, 2021 and June 11, 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 presented against a City Council for the denial of access to the acts of urban planning inspection carried out by the Local Police and Municipal Technical Services between April 1, 2021 and June 11, 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, I inform you of the following:

#### Background

1. On June 11, 2021, a citizen requests from the City Council the information, "previously anonymized if necessary with regard to the specially protected data of natural persons", relating to:

"1-List of acts or inspection bulletins of an urban nature made by the LOCAL POLICE (...) between April 1, 2021 and June 11, 2021 to verify that the minor works subject of municipal license or communication on land classified as Non-Buildable Land (SNU), Undelimited Buildable Land (SUND) and Unplanned Buildable Land (SUNP) carried out during the aforementioned period, have been adjusted (or not) to the municipal building permit granted or the communication made to the City Council by the interested party, indicating in each case the following data:

a) The type of action that the inspector has verified "on site" that has actually been carried out (demolition, construction of a new plant, repair works and, in this case, which ones, etc. b) Location of the works by means of ETRS89 geographic coordinates (longitude latitude) of the Cartographic and Geological Institute of Catalonia. c) Date or reference of the license or presentation of the communication by the interested party.

2-List of acts or inspection reports issued by the MUNICIPAL TECHNICAL SERVICES between April 1, 2021 and June 1, 2021, to verify that the minor works subject to a municipal license or communication in classified as Non Urbanizable Land (SNU), Non-Delimited Development Land (SUND) and Non-Programmed Development Land (SUNP) carried out during the aforementioned period, have been adjusted (or not) to the municipal building permit granted or the communication made to the City Council by the interested party, indicating in each case the following data:

a) The type of action that the inspector has verified "on site" that has actually been carried out (demolition, construction of a new plant, repair works and, in this case, which ones, etc.

b) Location of the work by means of ETRS89 geographic coordinates (longitude latitude) of the Cartographic and Geological Institute of Catalonia. c) Date or reference of the license or presentation of the communication by the interested party.

3-Identification of which municipal authority, Local Police command or municipal Technical Services personnel is in charge and therefore responsible for deciding which of the minor works carried out in SNU, SUND, and SUNP must be subject to inspection (and which ones are not, in their case) in order to verify that they really conform to the municipal license granted or the communication made to the City Council by the interested party.

2. On July 29, 2021, the City Council agrees on the partial estimate of the request for access to information and provides the claimant with the requested information regarding the municipal officials to decide which of the minor works that are performed must be inspected. On the contrary, the city council denies him access to the lists of acts or inspection bulletins basing this denial on the protection of personal data.

3. On September 3, 2021, the applicant submits a claim to the GAIP against the City Council for the partial denial of access to information.

4. On September 10, 2021, the GAIP requests the City Council to issue a report on the claim submitted, identify the third parties affected by the access and send the completed file to which it refers.

5. On October 21, 2021, the GAIP addresses the request for a report to this Authority in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance.

#### Legal Foundations

#### I

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

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

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, a number

identification, location data, an online identifier or one or more elements specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of this person (art. 4.1 of Regulation 2016/679, of 27 of April 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/EC (General Data Protection Regulation, hereinafter GDPR).

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 information that is the object of the claim are two lists that contain information on the acts or inspection bulletins of an urban nature carried out by the local police, in one and, by the municipal technical services, in the other, to verify that the minor works object of municipal license or of communication on land classified as Non-Developable Land (SNU), Non-Delimited Urbanizable Land (SUND) and Non-Programmed Urbanizable Land (SUNP) carried out between April 1, 2021 and 11 June 2021 have been adjusted (or not) to the municipal construction license granted or to the communication made to the City Council by the interested party.

The claimant requests that these lists include: the type of action that the inspector verified had actually been carried out (demolition, construction of a new plant, repair works and, in this case, which ones, etc.), the location of the work by means of the Geographical coordinates of the Cartographic and Geological Institute of Catalonia and, finally, the date or reference of the license or presentation of the communication by the interested party.

In principle, it does not seem that the request requires the identification of the owners of the properties affected by the inspections or reports, however, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, the data protection regulations, s 'applies to treatments that are carried out on any information "on an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person".

As stated in recital 26 of the RGPD, "To determine whether a natural person is identifiable, all means, such as singularization, that can reasonably be used by the controller or any other person to identify directly or indirectly must be taken into account to the physical 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 like technological advances."

The detail of the requested information relating to the specific location of the works where the inspections have been carried out by means of their geographical coordinates is location data. This data, together with the date of presentation of the licenses or communications or their reference, is information that would make it possible to know, without disproportionate effort, who are the owners of the properties affected by the inspections or reports, based on the information contained to the property register or other sources of information taking into account, in particular, that it is information about a small municipal

At this point it should be remembered that the data of legal entities are excluded from the scope of protection of the data protection regulations as specified by the RGPD itself, by establishing that "The protection granted by this Regulation must apply to individuals physical, regardless of their nationality or place of residence, in relation to the processing of their 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).

Consequently, there must be no inconvenience, from the point of view of data protection regulations, in providing the interested party with information related to inspections that affect legal entities. On the other hand, the data protection regulations will apply to the requested information that allows the identification of the natural persons who own the properties insp

According to 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" are data treatments personal data subject to the principles and guarantees 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 RGD provides that "The personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

The regulation and guarantee of public access to official documents held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), which recognizes people's right of access to public information, understood as such "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law" (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The lists that collect information on the acts or inspection bulletins of the local police and municipal technical services, which are the subject of the claim, are public information in accordance with article 2.b) of the LTC, subject to the right of access (article 18 of the LTC) that contains personal data.

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

### III

Article 23 of the LTC states 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 affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the the affected party expressly consents to it by means of a written document that must accompany the request

The minutes or inspection bulletins of an urban nature, carried out by the local police and by the municipal technical services, to check whether the minor works subject to a municipal license or communication in the municipality in a given period have been adjusted (or no) in the municipal license or in the communication made, contain information related to the power of inspection that the local bodies have in relation to the competences on urban p

In matters of urban planning, in accordance with articles 199 to 201 of Legislative Decree 1/2010, of August 3, which approves the Revised Text of the Urban Planning Law (hereafter TRLU), the violation of the planning regulations must give rise, peremptorily, to the initiation of a file for the protection of planning legality, regardless of the fact that subsequently (or in

the city council initiates the corresponding file to administratively sanction the infringing behavior.

In accordance with article 199 of the TRLU;

"1. All actions or omissions that allegedly entail a violation of the determinations contained in this Law, in urban planning or in municipal urban ordinances, subject to sanctions in accordance with the provisions of this Law and the regulations that implement it, must give place to the administrative actions necessary to clarify the facts and, subsequently, or directly, if no prior information is required, to the initiation of a file for the protection of urban planning legality.

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2. The power to protect urban planning legality is mandatory. The exercise of this power gives rise to the initiation and resolution of a procedure or of more than one whose object, jointly or separately, is the adoption of the following measures:

- a) The restoration of the altered physical reality and the violated legal order.
- b) The imposition of sanctions.
- c) The determination of damages and losses caused."

As this Authority has previously highlighted, the procedures for the restoration of legality are not procedures of a punitive nature. Thus, in accordance with repeated jurisprudence, in the face of a violation of planning legality, it is necessary to distinguish between the power to sanction if it is classified as a planning violation (as required by Article 25.1 EC), and the administrative power to restore the order violated, through the adoption of the necessary measures for the re-establishment of the infringed urban order that do not have the nature or character of a sanction.

In addition, in matters of urban planning, it is necessary to take into account the public action recognized by article 12 of TRLU that establishes:

**Article 12. Public action 1.**

Any citizen, in the exercise of public action in matters of urban planning, may demand before the administrative bodies and before the administrative contentious jurisdiction the compliance with the legislation and urban planning, an exercise that must conform to what is established by the applicable legislation.

2. The public action referred to in paragraph 1, if it is motivated by the execution of works that are considered illegal, can be exercised while the execution is prolonged and, subsequently, until the expiry of the limitation periods determined by articles 207 and 227, without prejudice to the provisions of article 210.

Therefore, the previous actions of these procedures for the restoration of urban legality, such as the inspection acts that support them, insofar as they do not constitute information related to a disciplinary file, would not be subject to the limitation provided for in the Article 23 of LTC.

Thus, in the case we are dealing with, the acts or inspection bulletins of a planning nature carried out by the local police or by the municipal technical services from which a file for the restoration of planning legality has been derived would not be subject to the established limit by article 23 of the LTC, given that even if irregularities are detected they cannot be considered necessarily associated with a sanctioning procedure.

#### IV

Access to public information that contains personal data not affected by the limit of article 23 must take into account the provisions of article 24 of the LTC, which provides the following:

"(...)

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the people affected. To 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.

3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the data protection legislation staff."

Therefore, the request for access to information containing personal data must be weighed in accordance with the provisions of article 24.2 of the LTC. This reasoned weighting between the public interest in the disclosure of information and the right of the affected persons must take into account the circumstances affecting each case and, in particular, the different elements listed in the aforementioned article (purpose of access, the fact that it may affect

In matters of urban planning, as has been explained, the right of access to information is particularly relevant given the recognition of public action (Article 12 TRLU), from which any citizen can demand from the administrative bodies and before the administrative contentious jurisdiction the compliance with the legislation and urban planning, an exercise that must be adjusted to what is established by the applicable legislation. Consequently, the public action allows anyone to contest the various instruments of arrangement, as well as the acts of their application.

Planning licenses must be granted in accordance with the provisions of the TRLU, urban planning and municipal ordinances (art. 188 1. TRLU).

In turn, article 3.2 of Decree 179/1995, of 13 June, which regulates the Regulation of works, activities and services of the local entities of Catalonia (ROAS) provides that "the intervention activity of the local authorities must conform to the principles of legality, equality, proportionality and congruence with the reasons and ends that justify the power to intervene, respect for individual freedom and the least burden on citizens".

In this context, the public interest in the control of planning legality could justify access to the requested information, including the possible identity of the owners of the properties affected by the inspections or reports. It cannot be overlooked, on the other hand, that article 84.1 of the ROAS already provides for certain publicity to be given to agreements or resolutions granting licenses, by providing that these are published in the manner provided for in the law and ordinances of the corporation, and demanding, in any case, its insertion on the notice board and its publication, when there is one, in the municipal newsletter.

Without prejudice to the provisions of article 18.2 of the LTC, according to which the exercise of the right of access to public information is not conditioned on the fact that a personal interest is involved, as well as not remaining subject to the motivation or invocation of any rule, from what the claimant presents it follows that the purpose of accessing the information relating to the inspections carried out by the municipal police and the municipal technical services would be to check whether these comply with the urban planning regulations and the license granted or the works project.

It is clear that granting access to this information to the claimant involves revealing personal information that may affect different personal spheres of those affected, mainly the patrimonial sphere, and the social sphere in terms of housing, but it is also clear that insofar as the purpose of the urban planning regulations is for citizens to be able to verify compliance with legislation and urban planning, knowing this information may be necessary to be able to exercise the public action recognized in the TRLU.

Given what has been explained, from the point of view of the data protection regulations, the regulatory forecasts in urban planning would justify knowing the information related to the inspections carried out as a result of the licenses for minor works or prior communication, including that information that would make the owners of the properties identifiable, such as the location of the work and the date or reference of the license or communication.

All this without prejudice to the fact that article 31 of the LTC establishes that if the request for public information may affect the rights or interests of third parties, identified or easily identifiable, they must be given the transfer of the request, for so that they can make the allegations they consider appropriate, in those cases that may be decisive for the meaning of the resolution. In the event that the allegations are justified, it would be necessary to limit access to the information that made

## Conclusions



**From the point of view of the data protection regulations, and taking into account that it is a matter of urban planning, there would be no inconvenience in providing the person making the claim with the list of acts or inspection bulletins of an urban nature carried out by the local police and by the municipal technical services, indicating the type of action that the inspector verified had actually been carried out, the location of the work by means of the Geographical coordinates of the Cartographic and Geological Institute of Catalonia and , the date or reference of the license or presentation of the communication by the interested party.**

**Barcelona, November 10, 2021**

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