

IAI 75/2021

**Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against a municipal company's denial of the request for access to information relating to bank statements and credit card holders from 2010 to 2020, as well as the person responsible for accounting and auditing**

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 in relation to the refusal by a municipal company of the request for access to information relating to bank statements and credit card holders from 2010 to 2020, as well as the person responsible for accounting and auditing.

Having analyzed the request, which is accompanied by a copy of the file of the claim submitted, in accordance with the report of the Legal Counsel, the following is reported:

**Background**

1. On January 15, 2021, a request for access to public information is submitted to the general registry of a City Council, in which access to the following information is required:

"1º [...] complete bank statements, without the concealment of movements or "Without DATA" as reflected in the attached table, which have been made with the cards (lists a total of 9 cards) linked to [...] , public company, from 2010 to 2020 both inclusive;

2º Given that the use of credit cards is personal and non-transferable and given the doubt in the uses and expenses of public money, made by these cards, made by several people, some of them presumably without legitimation for their use, supplanting the authorized holders of these, I request the Identification of all these persons as well as of the senior positions or officials, professional category of the persons authorized to each of the credit cards described above;

3º Identification of the person responsible for the accounting and auditing of [...]. If possible, deliver the information in a reusable format"

The request is based on the understanding "[...] that there has been a dereliction of duty by the auditors or municipal managers of the alleged abuses caused in [...] and there has not been sufficient monitoring of the expenses made by the previous manager [...] and other workers or third parties [...], considering that the fraudulent use of the company card for purposes other than those for which it is authorized constitutes a crime of embezzlement of public funds and given that there have been expenses for gasoline, in restaurants y otros varios unjustificados, for many years in [...] 100% municipal Public Company, what

It makes you think that there are many expenses to be incurred given the numerous "Without Data" jumps, in the periods of use of these company cards as shown in the attached table.

According to the request, and the attached documentation, the municipal company (henceforth, the entity) would have provided the applicant with information regarding the expenses of the company cards on which requests the information, between the years 2010 and 2019, both inclusive, but the applicant considers it insufficient. In particular, he attaches a table in which, among other issues, he states the following:

"This table highlights the large number of periods of time, (without data), for which the expenditure of public money made by the cards of [...] has not been provided, hardly believable that there are so many periods of inactivity for these cards. What makes us think and deduce that there is an interest in hiding these expenses without justifying them and those responsible who used them and took advantage of public resources for personal purposes"

2. On February 17, 2021, the applicant presents to the GAIP a claim (...) in which he states that the City Council has not responded to his request for access to the file , and reiterates its claim in the same terms.

On April 15, 2021, the GAIP agrees to resolve the claim in the following terms:

"1. Partially estimate the Claim (...) and declare the claimant's right to the requested information indicated in precedent 2.

2. Reverse the procedure and require [...] that, within 10 days following the notification of this Resolution, initiate the processing of the request for public information [...], and make a transfer of it to the persons whose identity is requested, for the purposes of what is provided for in article 31 LTAIPBG, in order to finally resolve what is proceeding in accordance with the right recognized in the previous section and the personal circumstances that, if applicable, disclose the hearing to the affected third parties. [...]"

3. On July 21, 2021, the entity informs the applicant that before resolving his request of January 15, 2021, he must transfer the request to the affected third parties, and informs him that has requested the General Intervention of the City Council for information on the identity of the person responsible for the entity's accounting and auditing.

As can be seen from the file sent, on that same date, the entity forwards the request to the affected third parties so that they can make any allegations they deem appropriate.

4. On August 9, 2021, the entity communicates the following to the applicant:

"[...] this entity proceeds to respond to your requests:

a) Completed bank statements without hiding movements or simply putting "no data", relating to the following cards: [...], linked to [...], from the year 2010, until 2020, both included.

You will find attached the relevant documentation, having deleted those data which, according to the current personal data protection regulations, the citizen cannot access.

b) Identification of the people who have used the indicated cards and professional category of those authorized to do so.

(The public company) has received a written response from some of the third parties affected by this request, showing their disagreement and NOT AUTHORIZING this entity to transfer any type of personal data [...].

With reference to those affected third parties who have not issued any authorization, it is important to know that, according to REGULATION (UE) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of April 27, 2016, relating to the protection of natural persons in regarding the processing of personal data and the free circulation of these data, silence or inaction do not constitute consent.

Therefore [...] cannot provide you with information about the identification of the people who have made use of the indicated cards.

c) Identification of the person responsible for accounting and auditing [...].

[...] this section of the request was referred to the administrative body that has the information, the General Intervention of the City Council [...]. As of today, 06.08.2021, this company has not received any response. We keep waiting."

In relation to the point referring to bank statements, the entity attaches a list in which the expenses made between the years 2010 and 2019 through credit cards are related, and in which different columns relating to the number are identified of card, date and time of expenditure, type of expenditure (purchases, bonus...), concept (gasoline or the name of the establishment) and its amount.

5. On August 16, 2021, the applicant presents to the GAIP a claim based on which he requests access to the same information as that requested in file 154/2021, considering that the provided by the entity is incomplete and insufficient. He alleges that it is the same information that was previously provided to him, and about which he is not satisfied.

In the claim, the applicant states that the entity informed him that in the face of the non-conformity of the information sent "[...] what can be done is present a new claim before the GAIP, because this second claim would have otro administrative act of which the GAIP has not yet pronounced". Reason for which the applicant files a new claim.

This claim receives the file number (...), on which it constitutes the object of analysis of this report.

6. On August 20, 2021, the GAIP will send the claim to the entity, requesting a report setting out the factual background and substantiating its position in relation to the claim,

as well as the complete file and, where appropriate, specifying the third parties affected by the requested access.

On September 28, 2021 and October 18, 2021, the GAIP reiterates the request to the entity given the lack of response to the request. In these, the GAIP particularly requires the entity to provide information relating to the third parties affected by the access that is claimed, requiring their contact details (name and surname, ID, email address and/or or mobile phone number) for the purposes of being able to obtain their participation in the claim procedure, as well as the importance of the fact that it facilitates the copy of the complete file containing the allegations of the affected third parties and the referral of the request to the Intervention of the City Council regarding the identification of the person responsible for the entity's accounting and auditing.

7. On October 18, 2021, the entity responds to the request of the GAIP and sets out the following:

"[...] 2. That, the relevant information on the first point was transferred to the interested party: Complete bank statements, without hiding movements or limiting themselves to putting "no data", [...], having deleted those data to which, according to the current personal data protection regulations, the citizen cannot access. The attached data are all those available to the company, having to emphasize that they cover from 2010 to 2019 because in 2020 these cards were no longer used.

3. That, regarding the second point, identification of the people who have used the indicated cards and professional category of those authorized to do so, [...] has received a written response from some of the third parties affected by this request, showing their disagreement and NOT AUTHORIZING this entity to transfer any type of personal data (name, surname, address, telephone, identity card number, and any that are protected by data protection regulations current staff).

With reference to those affected third parties who have not issued any authorization, it is important to know that, according to REGULATION (UE) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of April 27, 2016, relating to the protection of natural persons in regarding the processing of personal data and the free circulation of these data, silence or inaction do not constitute consent.

Therefore, [...] cannot provide information to the interested party about the identification of the people who have used the indicated cards, which, specifically, are four.

Likewise, we will comply with your request to transfer contact details of the third parties affected (name and surname, ID, email address and/or mobile phone number) as long as they guarantee us that they will keep them in STRICT CONFIDENTIALITY, since they are related to the legal proceedings in which this company is immersed.

4. That, finally, on the third point where the identification of the person responsible for accounting and auditing [...] was requested, this entity, in order to guarantee the right

of access to the interested party's public information, referred the request to the administrative body that has the information, the General Intervention of the City Council [...].

As of today, 15.10.2021, despite having reiterated to the competent body the importance of the transfer of information, through a new letter this company has not received any response. We keep waiting. [...]."

8. On October 25, 2021, the GAIP requests a report from this Authority, in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to the 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, 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 (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 circulation of such data and by which Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

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 data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, apply to the 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".

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".

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment "is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

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 of the Member States that applies to them in order to reconcile the public's 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).

In the case at hand in which access is requested to information related to the use and ownership of the credit cards of a public company, as well as the identity of the person responsible for the accounting and auditing of this, this information must be considered public for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC), being documentation in his possession as a result of their activity. It must be noted, however, that this right of access 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

The object of the claim is to obtain a copy of the complete bank statements relating to the expenses, between the years 2010 and 2020, charged to certain credit cards linked to the entity; to know the identity of the people who have used it and the professional category of those who were authorized to use it, as well as to know the identity of the entity's accounting and auditing manager.

This Authority has previously had the opportunity to analyze the right of access to public information exercised by the person who is now a claimant against the same entity, and in which on that occasion he also requested, among other issues, bank card statements of the entity's credit, the identification of the people who have used it and the professional category of who is authorized to make use of it, and what disciplinary or criminal legal measures would have been adopted in the event of the detection of irregularities in economic and accounting management.

In particular, we refer to the IAI report 11/2021, available on the website <https://apdcat.gencat.cat>, in which it emerged from the antecedents that the request for access had its origin in the publication by the local press, following public statements by the current management of the entity, of the detection of irregularities that affected the economic and accounting management of the entity between 2013 and 2019 in relation to the use of credit cards linked to it, among other issues.

This seems to be relevant to the case at hand, insofar as the claimant grounds the request for access, dated January 15, 2021, considering that there has been no control of the expenditure made by the management and some workers or persons outside the public company, and that there there has been fraudulent use of company cards for purposes other than those authorized, referring to the alleged commission of a crime of waste of public money.

However, unlike the IAI 11/2021 report, in this case the information requested is not related to any disciplinary or legal responsibilities that may or may be required of the holders of credit cards linked to the entity on which information is requested, otherwise that you are only requesting the full bank statement for the cards you list in your application, the identity of the people who have used it, and the professional category of the people

authorized. On the other hand, he also requests to know the identity of the entity's accounting and auditing manager.

In accordance with this, and to the extent that the information to which the claimant intends to access does not refer to the commission of criminal or administrative infractions, or other categories of specially protected data referred to in article 23 of the LTC ([...] such as those relating to ideology, trade union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of offenses criminal or administrative that do not entail a public reprimand to the offender [...]), the analysis of the claim of access must be conveyed through what is provided for in article 24 of the LTC.

Article 24 of the LTC provides for 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 it has to prevail over the protection of personal data or other constitutionally protected rights.

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. To carry out this weighting, the following circumstances must be taken into account, among others:

a) The elapsed time.

b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.

c) The fact that it is data relating to minors.

d) The fact that it may affect the safety of people.

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."

This article establishes the need to make a reasoned weighting between the public interest in the disclosure and the rights of the people affected, taking into consideration, among others, the time that has passed, the purpose of the access, the guarantees that are offered, if there are minors affected or the fact that the intended access could affect the safety of people.

To this end, it should be borne in mind that article 18.2 of the LTC provides that 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 the invocation of any rule, but knowing the motivation of the request may be a relevant element to take into account when making the weighting required by article 24.2 LTC.

The claimant, when requesting access, refers to the fact that he considers that there has not been sufficient control over the expenditure made by the previous management and other workers of the entity, and considers that a use has been made fraudulent use of company credit cards for purposes other than those authorized. In this context, and taking into account that the entity already provided him with information relating to card expenses, the applicant considers that the information is insufficient and alludes to the fact that the entity could be hiding data. And reiterates the



your request to know the identity of the people authorized to use it, and of the people who used it in the period between 2010 and 2020.

Taking into account the general purpose of the transparency regulations, that is to say, the possibility of offering tools to citizens for the control of the actions of the public authorities, from the perspective of the claimant the claimed information would allow him to exercise control about the entity's accounting and tax administration, and in particular to know whether the person who was authorized to use the credit cards linked to the entity had a professional category that required having public funds available for the exercise of their functions, and if the expenses charged to public funds corresponded, effectively, to expenses derived from their functions.

Beyond this, it should be borne in mind that in matters of administrative contracting, article 13.1 of the LTC obliges the administration to publish certain information relating to contracts, such as information on contracting entities and bodies or the contracts signed with the indication of the object, the amount, the identity of the successful bidder, etc. This obligation covers all contracts, including minors, and enables citizens to access this information, and the rest referred to in article 13.1 of the LTC. This must be a first criterion to take into account to weigh the justification of access and its impact on the right to data protection.

However, based on the provisions of article 13.1 of the LTC, the information relating to public procurement must include the data of the entity and the contracting bodies, or the identity of the successful tenderer - with regardless of whether it is a legal or natural person -, but it does not refer to the data relating to the natural person that may be linked in a more direct way to the object of the service contracted, as is the case of the information alone requested in the case at hand if information is provided about the person holding the card with which the payment was made.

From the perspective of the people affected, it is appropriate to analyze different factors that come into play in the case at hand.

In general, the use of credit cards by personnel holding public positions is related to the so-called "payments to be justified". These payments can be made through cash or through credit cards, as seems to be the case in this case, and consists of the administration or the public entity in question making them available for attend to frequent or recurring payments of small amounts usually intended for current expenses in goods and services, or to attend to occasional needs that do not have continuity during the financial year and that cannot be satisfied through the normal payment process, with the provision of documentation justification prior to the corresponding authorizations, provisions, obligations and payment proposal, which govern the ordinary procedure for the execution of expenditure. This exceptional payment procedure is provided for in article 190, in relation to article 162, of the Royal Legislative Decree 2/2004 of March 5, which approves the revised text of the law regulating Local Finances (TRLHL).

It should be borne in mind that the card holders, or those who are authorized to use them, have funds linked to public accounts for the exercise of functions entrusted to them, and their use must be linked to the public purpose that justifies the expenditure. Consequently, these people must be high officials or officials who occupy positions of special trust and responsibility or for certain jobs that require public funds to be available for

the exercise of its functions, through a special procedure for the execution of expenses such as those of the payments to be justified.

In a general context, it seems clear that knowing which people are the holders or have been attributed the possibility of using credit cards with regard to these payments to be justified is public information which may be of special public interest and which, a priori, it does not seem that it should have particular relevance in terms of the right to the protection of personal data, nor to personal privacy.

Now, a different level of interference in privacy would entail knowing in addition what is the use of the credit cards they have assigned through access to a copy of the bank statements, since the information that may be affected could be very diverse

On the one hand, knowing all bank transactions would probably allow us to know data relating to travel, restaurants, hotels, etc. Although this data, by itself, would not identify the holder or the authorized person, to the extent that the analysis of the movements can be related without disproportionate efforts to a natural person, it would allow obtaining information which in some cases could affect seriously in his intimate and personal sphere.

Thus, by way of example, the fact of having information about the expenses that a person makes in restaurants, allows to know not only the cost of the meal, but also the place where he eats. This information considered in isolation can already offer information in itself, for example, it can end up describing a pattern of behavior, if it allows to know a habit, for example if the person in question is a regular of a certain establishment, of a certain means of transport, etc., which could affect in a highly intrusive way your right to the protection of personal data, affect particularly protected data or even your personal and family privacy, being able to reach, in some cases, even to affect your personal safety.

In addition, the interference with the right to the protection of personal data of the persons affected by the request in this particular case may still be greater to the extent that the requested information is requested with respect to the period between the years 2010 and 2020, both included, a fact that without going into detail already evidence that it would lead to access to a large amount of data which may be disproportionate to the intended purpose.

On the other hand, it should also be borne in mind that in the case in question the entity transferred the affected third parties so that they could present the allegations that could be decisive for the resolution of the request for access under the which provides for article 31 of the LTC.

It is worth saying that the file does not include the allegations made by the third parties affected by the request, but based on what the entity highlights, the third parties who responded denied the fact that their information was provided to the applicant, without reference to the reasons on which they base it. In any case, the mere refusal of the affected persons must not, by itself, condition the weighting between the public interest in the disclosure of the requested information and the rights of the affected persons.

On the basis of everything that has been set out, in the case at hand, it is considered that access to a copy of the complete bank statements, between the years 2010 and 2020, both inclusive,

corresponding to the expenses of certain credit cards linked to the entity and knowing the identity of the holders or persons authorized to use them, as well as their professional category, can affect in a highly intrusive way the right to the protection of personal data of those, to their personal and family privacy, and could, in some cases, even affect their personal security.

However, in application of what is provided for in article 25.1 of the LTC ("If any of the access limits to public information established by the previous articles are applicable, the denial of access only affects the corresponding part of the documentation, and restricted access to the rest of the data must be authorized"), and from the perspective of being able to achieve the purpose of the transparency regulations - the control of the actions of the public authorities -, it is considered that access to the requested information can be granted, and it would be less invasive to the rights and freedoms of affected third parties if access to the information is facilitated by excluding some data.

On the one hand, information can be provided regarding the number of people who hold or are authorized to use credit cards linked to the entity, and what position they hold, but it does not seem necessary to be able to assess the proper use of the cards to jointly provide the name and surname of the affected person. Knowing the positions they hold would already allow the claimant to analyze the relevance of the decision to authorize use or the process of assigning credit cards and at the same time control that the expenses charged to public funds correspond to the exercise of their functions. It is true that once the position or workplace is known, in many cases it can be relatively simple to know the identity of the persons in charge, but in any case, the option proposed would be less intrusive for the protection of data that directly provide the name and surname of the affected persons.

On the other hand, the stated purpose of control may justify facilitating the copying of bank statements, limiting the information provided to the position or workplace to which it is assigned, some digits of the card number that allow it to be identified and a description of the expenditure concepts that allows them to be categorized (catering, transport, stays...) and contextualized (issuer of the charge and date), but avoiding providing other information that could allow to know aspects linked more intensively to the private life such as habits, behavior patterns, etc.

#### IV

In relation to the identity of the person responsible for accounting and auditing of the entity, it is worth saying that the right of the claimant to know this information does not seem to be the subject of debate. In fact, it appears from the file sent that the entity has made various requests to the General Intervention of the City Council to identify the person responsible, and that, according to it, the response from the Intervention is needed to be able to attend to the request of this information.

In any case, the analysis of access to this information must be carried out in accordance with the provisions of article 24.1 of the LTC. Consequently, in principle there should not be any impediment in giving access to the claimant, unless there is some circumstance from which the protection of personal data or other constitutionally protected rights of the affected person must prevail.

To this end, it is necessary to take into account the provisions of article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (from now on, RLTC), by which it is necessary to understand as merely identifying data those 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, referred to the staff at the service of the public administrations, senior officials and managerial staff of the public sector of public administrations.

### **conclusion**

In accordance with what has been stated, the claimant can access the information relating to the number of people who hold or are authorized to use the credit cards linked to the entity, what is the position they hold, and a copy of the bank statements between the years 2010 and 2020 that include some of the figures of the card number that allow it to be identified and a description of the expenditure concepts that allow them to be categorized (restaurants, transport, stays...) and contextualize them (issuer of the position and date), but avoiding providing other information that could allow to know aspects linked more intensively to private life such as habits, guidelines of conduct etc.

On the other hand, given the information available, it does not seem that there should be any impediment to giving the claimant access to the identification of the person responsible for the entity's accounting and auditing.

Barcelona, November 17, 2021