

IAI 79/2021

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 Department's partial estimate of the request for access to information relating to deputies who have been escorted by the Police of the Generalitat-Mossos d'Esquadra during the X legislature , XI, XII and XIII

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 in relation to the partial estimate of a Department of request for access to information relating to deputies who have been escorted by the Generalitat Police-Mossos d'Esquadra during the X, XI, XII and XIII legislatures.

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 August 26, 2021, a request for access to public information is presented to the Department, in which access to the following information is required:

"Details of each and every one of the deputies who have been eavesdropped by the Police of the Generalitat-Mossos Squad (PG-ME) during the X, XI, XII and XIII legislatures. I request that the information be broken down for me by legislature and for each and every one of those requested, the full list of deputies who had listening to the PG-ME be indicated. I request that, in addition, for each legislature and member of parliament who has had an eavesdrop, please indicate their number, the reason for the eavesdropping, if they were eavesdropped at the proposal of the Interior or if the deputy himself requested it and from what date to what exact date within that legislature I have hearings. In the event that a deputy has had hearings during more than one of the requested legislatures, I ask that the information regarding his case be indicated in each specific legislature that he has had hearings [...]"

2. On September 30, 2021, the Department responds to the applicant as follows:

"[...] we have attached a document in spreadsheet format with the requested data. The information we are sending you is all available, and it is the same that was notified in the complaint resolved by the Comisión de Garantía del Derecho de Acceso a la Información Pública (GAIP) of Catalonia, resolution 556\_2021, which we also attach"

The document referred to by the Department, nor the specific information it contains, is not included in the file sent.

3. On October 6, 2021, the applicant submits to the GAIP a claim based on which it reproduces in the same terms the application submitted to the Department, and informs

that not all the requested information has been made available. In particular, the claimant states the following:

"

I have not been given this information that I asked for:

- The reason why deputies were asked to listen to it, if they were asked to listen to it at the proposal of the Interior or the deputy himself asked for it and from what date to what exact date within that legislature are hearings available. In addition, they have only given the 11th and 12th legislatures, but not the 10th and 13th that I had also requested."

4. On October 11, 2021, the GAIP will send the claim to the Department requesting a report setting out the factual background and the basis for its position in relation to the claim, as well as the complete file and, where applicable, that specify the third parties who are affected by the claimed access.

5. On October 21, 2021, the Department sends to the GAIP a report signed by the Head of the Technical Cabinet, in relation to what the claimant highlights in his claim, and a document with information related to the protection of the deputies

In particular, the Department sets out the following in its report:

"1. The escort service has only been assigned while the institutional position lasted (dates of discharge and termination of the position).

2. The escort service is not given to be a deputy, but to hold another compatible institutional position, such as: president of the Generalitat, members of the Government of the Generalitat, president or president of the Parliament of Catalonia, head of the 'opposition and some leaders of the parliamentary groups.

However, we are attaching a new spreadsheet document that has been prepared expressly (MPs with protection (005)), which contains information related to the security provided by the Department [...] to the members of the Parliament of Catalonia .

Inform you, also, that only information is available from the escort services of the last two legislatures, the XI and the XII.

Finally, in relation to the current legislature (XIII-XIV), the requested data cannot be provided for reasons of security and protection of people."

The Department attaches a spreadsheet, with information relating to the 11th and 12th legislatures of the Parliament of Catalonia, in which it contains a list with the names and surnames of the deputies who have had protection service, the date of discharge and discharge as a deputy, the position, the appointment and removal from office, a field of observations that is empty in all cases and the police force in charge of protection - being in all cases the Police of the Generalitat - Mossos d 'Squad-.

6. On October 25, 2021, the GAIP sends the claimant the report sent by the Department and warns that if no allegations are submitted within five working days, the claim procedure will be terminated.

On October 29, 2021, the claimant expresses his desire to continue with the claim procedure, understanding that the Department has not delivered all the information claimed.

7. On November 8, 2021, the GAIP informs the Department that "[...] given that in your legal report you indicate the impossibility of delivering the information relating to the XIII-XIV legislature, for reasons of security and protection of people, and in order to assess whether it is appropriate to estimate access to the claimed information, we require you to give us arguments and reasons, within a period of five days, how the security and protection of the deputies of the "current legislature, who have an escort."

On the same date, the GAIP sends an email to the claimant requesting the following:

"[...] specify which information the Department [...] has not delivered, within five days. If you do not present allegations, we will understand that the information requested regarding the legislatures X, XI and XII, including the motivation of the hearing, has already been given to you. Regarding the X legislature, taking into account that the Administration has informed that it does not have this documentation, and that the GAIP does not have inspection powers, the Commission cannot require more documentation in this regard. In this way, it would be pending to evaluate access to information about the XIII-XIV legislature."

8. On November 15, 2021, the Department forwards to the GAIP a report in which it highlights the following:

"[...] The information that was provided [...] is all that is not affected by the limits provided for in article 21.a.i 24.2 of Law 19/2014, of December 29, on transparency, access to public information and good governance.

Providing information about MPs who are provided with personal protection may compromise their safety and that of those who have not been provided with personal protection. It can also reveal data relating to the functioning of police forces that could compromise operations. The information can reveal and expose the lack of protection for some deputies, which could affect, as we have said, their security. This affects in a very intense way the deputies of the current legislature, but it also affects the information about the security devices for the deputies of previous legislatures, since having information about the security devices existing in previous legislatures can provide information that may affect the effectiveness of current or future security devices.

Apart from these issues related to security, both of the deputies who have been assigned protection and those who have not, it should be noted that information about the reason for the establishment of security for certain deputies can offer information about aspects of his private life.

In this sense, it is obvious to remember that police work generates a set of work documentation (procedures, instructions, operational guidelines, etc.) which by their very nature cannot be disseminated. The dissemination of this operational information can be used to avoid the action of the police, attempt against the security of the agents or that of the people

way they can be involved in a police incident and even interfere in the protection of the victims. In the case we are dealing with, of the deputies of the current legislature.

In situations like these, providing specific information about police work puts the agents, all the people involved, in a situation of vulnerability and therefore interferes with the objective of guaranteeing public safety.

The establishment of security for deputies remains subject to the risk assessment carried out by the Police of the Generalitat-Mossos d'Esquadra. This assessment of the risk can involve the analysis of many aspects of the life of the members of parliament, not only of their professional life but also of their private and intimate life.

[...]

Finally, it should be borne in mind that the current situation requires a significant police effort: the country remains on alert 4 out of 5 for terrorist threat. Added to this level of alert is a psychosocial context that generates a police demand that is added to that which, in an ordinary way, involves the fight against common and organized crime. In this complex scenario, we understand that the work carried out by the Generalitat Police - Mossos d'Esquadra, or the safety of the members of the Parliament of Catalonia themselves, cannot be unnecessarily endangered by disseminating internal procedural information that is not relevant to the general public.

For everything that has been presented, having carried out a specific and detailed dissemination, and having weighed the rights and limits in conflict in this request and the consequences that could derive from it, the General Directorate of the Police ratifies in the resolution issued."

9. On November 16, 2021, the GAIP requests the Department to communicate "[...] the list of deputies of the XIII-XIV Legislature who have an escort, and the reasons why they have one, for so that we can proceed to transfer the present claim to them and, immediately afterwards, assess the concurrence of the limits you have invoked".

10. On November 17, 2021, the claimant sent an email to the GAIP, in response to the communication of November 8, 2021, in which he stated the following:

"[...] The only thing that is really missing is the start and end date of having the scout for each one, which even if they say that it corresponds to the position, there are some who have more than one position with different dates and that then we can't know real dates."

On November 18, 2021, the claimant sends a new email in which he wishes to clarify that he does not desist from obtaining information regarding the current legislature.

11. On November 24, 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 information public and good government.

Legal Foundations

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, in accordance with the provisions of article 5.a) of Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and enforcement of criminal penalties.

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

At the outset, it should be noted that the information about which access is requested, that is to say, that relating to the deputies to whom a security service is provided by the competent authorities in matters of public security, in principle may come within the scope of application of Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and execution of criminal sanctions (of hereinafter, LO 7/2021), to the extent that it was collected by competent authorities, with the purpose of protection and prevention against threats against public security (art. 1).

However, it must be borne in mind that the object of the analysis that concerns us in this report consists of a treatment that is not subject to the aforementioned Organic Law 7/2021 to the extent that altho

the communication is made by a "competent authority" for the purposes of that Organic Law, the purpose for which the communication is made is not part of the purposes provided for in article 1 of the Organic Law, so this treatment is subject to the RGPD as it follows from article 2.3.a) of Organic Law 7/2021.

Article 5.1.a) of the RGPD establishes that 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 one 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 we are dealing with in which access is requested to information relating to members of Parliament with protection by the Police of the Generalitat - Mossos d'Esquadra in different legislatures (including the present one) and with the breakdown of each, 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 their 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

Prior to the analysis of the substantive issues, it is appropriate to refer to what is the object of the claim.

Initially, the claimant requested from the Department a list of the deputies who have been escorted by the Police of the Generalitat - Mossos d'Esquadra in the X, XI, XII and XIII legislatures.

In particular, he requested that it be stated, broken down by each of the legislatures, the name of the deputies who have had an escort, and in each case, the reasons for which they were provided with an escort, during which period of time they had, and whether this decision was at the proposal of the Department or of the deputy himself.

After the claim was lodged, the Department provided the claimant with certain information relating to the XI and XII legislatures, which in the claimant's judgment is insufficient considering that, although the Department claims that the escort allowance corresponds to the position, the start and end dates of the escort service that are indicated do not make it possible to know, in those cases in which the deputies have held different positions, to which position they correspond and the actual dates of the service.

In relation to the X legislature, the Department informed him that it does not have the requested information, and with regard to the XIII legislature, it informs that access cannot be granted because, in summary, access to this information can affect the safety of deputies as well as the work carried out by the Police of the Generalitat - Mossos d'Esquadra.

In this context, the claimant informs the GAIP on November 17 and 18, 2021 that the Department is yet to communicate the exact dates of the provision of escorts to deputies in the XI and XII legislature in the sense that 'exposed, and the information relating to the XIII legislature. Therefore, the object of analysis of this report constitutes this information, although the considerations that will be transmitted below are also applicable to the rest of the information initially requested.

At the outset, it should be noted that this Authority has previously had the opportunity to analyze the right of access to public information relating to the security provided to members of the Parliament of Catalonia in terms similar to the case at hand. In particular, we refer to the IAI report 36/2020, available on the website <https://apdcat.gencat.cat>.

The analysis of the access sought by the citizen must be based on the provisions of article 24 of the LTC, which 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 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.”

It should be borne in mind that the identification data of elected deputies are public data in accordance with electoral legislation (Organic Law 5/1985, of 19 June, on the general electoral regime) and, moreover, once proclaimed, their identification remains subject to the advertising regime. In particular, it is worth highlighting article 211 of the Parliament's Regulations, which provides for the obligation to publish the organization of the Parliament and the Parliamentary Administration of the people proposed to occupy public positions whose appointment corresponds to the Parliament.

This regime operates without prejudice to the right of access to public information, and especially in relation to merely identifying data which, according to article 24.1 of the LTC, must be given access to the extent that the request is related to information related to the organization, operation or public activity of the administration, unless the protection of personal data or other constitutionally protected rights must prevail.

However, it must be borne in mind that the claimant's claim is not to know merely identifying data, but rather those deputies who have been provided with escorts from the Generalitat Police - Mossos d'Esquadra in the current legislature (XIII), the reasons that justified it, if this decision was made by the Department itself or at the request of the deputy himself, and the start and end date of the provision of security (this data also in relation to the XI and XII legislatures). Consequently, the claim must be analyzed based on article 24.2 of the LTC, which requires the weighting between the interest in the disclosure of the information and the rights of the affected persons, understood as any right or freedom that may be affected by the disclosure of the information to which access is sought.

In accordance with the provisions of article 24.2 of the LTC, the weighting must be carried out in consideration of the elements that, for each particular case, may be relevant, such as, for example, the time elapsed with respect to the information requested, the safety of people or the purpose of access.

Regarding the purpose, article 18.2 of the LTC provides that the exercise of the right of access to public information is not conditional on the concurrence of a personal interest, nor is it subject to the allegation of a motivation or invocation of any rule. However, knowing the purpose or motivation of the request can be an important element to take into account in the weighting. In this specific case, the file does not state the motivation or purpose for which the data sought to be accessed are intended, for this reason this circumstance cannot be assessed. However, in accordance with the provisions of article 18.2 of LTC, this fact does not in itself prevent the exercise of the right of access to public information.

It is clear, as stated by the Department, that providing information about MPs who are or have been provided with personal protection, such as the reason for and the start and end dates of service may compromise their security and also that of those to whom protection has not been provided. It can also reveal data relating to the functioning of police forces that could compromise operations.

It should be borne in mind that, although the person making the claim has not requested data relating to the type of operations, the personal resources allocated, or other details about the devices, the



information can reveal information from which patterns could be established in relation to the decisions taken by the Police of the Generalitat - Mossos d'Esquadra, such as if the start date of the escort provision corresponds to the taking possession of the position, or if the security service is temporarily maintained after the resignation, and for how long in each case.

This information, which affects the MPs who have been provided with escorts, also exposes the lack of protection by other MPs, which could affect their security.

Knowing this information, on the other hand, can also allow us to deduce what circumstances the Generalitat Police - Mossos d'Esquadra can take into account to equip the deputies with the escort service, without prejudice to the cases in which the regulations expressly provide for the need to guarantee its protection, in accordance with what will be analyzed below.

These circumstances affect in a very intense way the deputies of the current legislature, but it also affects the information about the security devices for the deputies of previous legislatures, given that having information about the existing security devices in previous legislatures can provide information that may affect the effectiveness of current or future security devices.

Apart from these issues related to security, both of the deputies who have been assigned protection and those who have not, it should be noted that information about the reason for the establishment of security for certain deputies can offer information about aspects of his private life.

Except for the cases of the presidents of the Generalitat, former presidents and councilors of the Presidency, in which the regulations already foresee the need to guarantee their protection through the Institutional Security Area of the Department of the Presidency (seventh additional provision of the Decree 20/2019, of 29 January, restructuring the Department of the Presidency) or other cases, such as the president or president of the Parliament of Catalonia, head of the opposition and some heads of parliamentary groups, in which it is deduced of the Department's response that they already have general security assigned due to their position, the establishment of security for other high-ranking officials and deputies remains subject to the risk assessment carried out by the Police of the Generalitat Mossos d'Esquadra, of agreement with what the Department states in its refusal resolution. This risk assessment can involve the analysis of many aspects of the MPs' lives, not only of

Giving out this information can significantly affect your private and even intimate life.

Faced with this, the public can certainly have an interest in knowing the use of public resources and specifically the resources intended for the security of members of Parliament. As stated in the statement of reasons of the LTC, "In a context of a democratic state and the rule of law, all public authorities have the legitimacy given to them by citizen participation in their configuration (directly or indirectly), the which forces citizens to account, in accordance with the principle of responsibility, for their activity and the management of the public resources that have been made available to them."

However, this Authority considers that this control can also be carried out without the need to know the identity of the specific people to whom security service has been assigned, the origin of the decision and the reason, as well as the specific dates of the duration (or continuity) of the service in each case.

Based on everything that has been set out, it is considered that the right to the protection of personal data should prevail over the right of access. From the point of view of data protection regulations, it could be sufficient for these purposes to be able to have information on the number of deputies who have enjoyed security and the general explanation of the allocation criteria (without being able to link with aspects of the life of specific deputies).

#### conclusion

It would not be in accordance with data protection regulations to provide information on the identity of members of Parliament who have been assigned security in the current legislature (except in cases where the regulations expressly provide for this, due to the position), the reason and origin of the allocation decision, and the exact dates of the allocation relating to both the current legislature and the XI and XII legislatures, given that this information can affect both the security of the people affected and aspects of his private life and even

Barcelona, December 23, 2021