

IAI 82/2021

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 Department of the Generalitat for the partial denial of access to the initial requests and the resolutions of three files of the PAC.

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 department of the Generalitat for the partial denial of access to the initial requests and the resolutions of three PAC files, one corresponding to the year 2019 and two to the year 2020.

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 May 17, 2021, a citizen addresses a department of the Generalitat, as the owner of the cadastral property (...), and as interested in the file requests a copy of the initial request and of the resolution of the file with nº 140387/2019.
2. On May 24, 2021, the same citizen requests the following information from the department: "copy of the initial requests for files nº140304 and nº140338 of the PAC 2020 relating to cadastral properties (...)" as well as of the resolutions of these files.
3. On June 29, 2021, the department, in response to the request of May 24, informs the applicant that the plots of which he is the owner were declared by two different people (he is told which are the people who declared the plots of their property). With respect to the initial requests, the Department partially denies him access, basing the denial on the data protection regulations since, according to the record, these documents contain personal data that refer to plots that are not his property. However, it tells you the date and name of the declarant and the inclusion of their parcels in the declaration. Likewise, with regard to the resolutions of the files, the Department informs you that the aid amounts are calculated globally for the totality of the surface area declared by the beneficiary for each aid and that those amounts cannot be broken down by level of plot, but it informs you of the database where you can consult the grants granted and to facilitate the search, it informs you of the grants granted.
4. On July 26, 2021, the Secretary of the department responds to the applicant in relation to the request of May 17, 2021 and the applicant's repeated complaints about the neglect of his requests. In this letter, the department informs the claimant that it provides him with the DUN 2019 requested and, as indicated "duly anonymized" (although in the documentation sent it can be seen that the identification of the persons requesting the aid). Regarding the resolutions of the files, the department reiterates that

the grants awarded cannot be broken down at plot level and that these resolutions will not provide you with detailed information on what the declaration of your plots means. However, he informs him that they provide him with "the resolutions in the format we have and duly anonymized"

5. On October 29, 2021, the applicant files a claim before the GAIP against the department for the denial of access to the required information.

6. On November 29, 2021, the GAIP requests the department 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.

7. On November 29, 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, 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 information that is the object of the claim is the request and resolution of a public aid file from community funds in the area of the PAC corresponding to the year 2019, and the initial requests regarding two files corresponding to in the year 2020 that the claimant identifies with their corresponding file numbers, with regard to four properties that are their property and that, apparently, had been included in the application for PAC aid and other people

This information, relating to aid files, which due to the dates they refer to must be understood as having already been completed, contains personal data of aid applicants and also of other third party holders of other plots that may appear in the corresponding applications (whether or not they appear identified directly in any of the aforementioned documents). According to the information available, it would be natural persons. This, in addition to data from public employees and the holders of the competent bodies for the processing of those files.

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

Also, article 4.2 of the RGPD establishes that "consultation, use, communication by transmission, dissemination or any other form of enabling access, access or interconnection, limitation, deletion or destruction" are treatments of 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

fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment”.

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

At the same time, article 86 of the RGPD provides that "The personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

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 information subject to the claim is 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

It can be ruled out, in principle, that the requested information contains special categories of data under the terms of article 23 LTC which provides for the denial of requests for access to public information that contains "specially protected personal data , such as those relating to ideology, union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not involve public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request."

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:

**"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.**

**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."**

**According to article 24.1 of the LTC, 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 personal data merely identifying unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.**

**Article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (DLTC), specifies that pursuant to the provisions of Article 24.1 of Law 19/2014, of December 29, "merely identifying personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone number and addresses, postal and electronic, of professional contact, referred to the staff at the service of public administrations, senior officials and managerial staff of the public sector of public administrations".**

**As a result, access could be given to the identification data of public employees and the holders of the administrative bodies in charge of processing the files corresponding to aid in the field of the PAC that may be included in the requests and resolutions of the files claimed . It must be taken into consideration that the ID of these people and the handwritten signature would not be included in this merely identifying data (art. 70.2).**

#### IV

With regard to the rest of personal data, the claim of access requires that it be subjected to a weighting judgment in accordance with the provisions of article 24.2 of the LTC. In other words, a prior reasoned weighting between the public interest in disclosure and the right of the affected persons in which all the circumstances affecting each specific case are taken into account with the aim of elucidating the prevalence between the right of access and the rights of the people affected, taking into account the different elements listed in the aforementioned article.

One of the elements that, in accordance with article 24.2 of LTC, must be taken into account in the weighting of rights is the purpose of the access. According to the documentation accompanying the claim, the claimant states that he is the owner of plots that have been declared in the applications for the claimed files and wants to know the amount received for each plot and "the legal relationship asserted for those interested to apply for aid".

This weighting must be done with respect to the personal information contained, on the one hand in the requests for the files claimed and, on the other hand, with respect to the resolutions of these files.

The applications for aid files contain personal data both of the aid applicant and of third parties who may be holders of other parcels declared by the applicant in their application. Thus Annex VII of Royal Decree 1075/2014 of December 19, on the application from 2015 of direct payments to agriculture and livestock and other aid schemes, as well as on the management and control of direct payments and payments to rural development, establishes the minimum information that must be contained in the single application, among which, identification data of the applicant farmer (including first and last name, DNI, spouse's name, matrimonial regime, address), bank details, as well as details of the declared parcels, with respect to which it must indicate "the tenancy regime, that is, if it is owned by the applicant; it is operated under a lease or shareholding regime, indicating in these cases the NIF of the lessor or sharecropper; usufruct or it is a communal surface assigned by a public authority managing it, in which case you must provide the documentation relating to said assignment".

With regard to the personal information of aid applicants, the weighting between the right to the protection of their data and the claimant's right to access the information has special significance given that the claimant is the owner of the parcels declared included in the application.

As established in article 15 of the aforementioned Royal Decree 1075/2014 "Agricultural plots of admissible hectares used to justify aid rights must be at the disposal of the farmer, either in ownership, usufruct, lease, shareholding or allocation by a public authority managing a communal asset, on May 31 of the year in which the aid is requested".

Among the requirements to access these aids, for the purposes that we are now dealing with, it must be taken into consideration that the regulatory regulations provide that it is limited to a single aid with regard to the same agricultural surface (article 28.4 RD 1075/2014). Therefore, to the extent that a double declaration of parcels is not possible and taking into consideration the consequences

lead to a double imputation of these by the owner of the plots (by application of the sanctioning regime provided for in the regulations governing the aid of the PAC,) it is clear that there is a legitimate interest in the owner of the land to know the information relating to aid applicants and, specifically, to the information linked to the inclusion of their estates in the declaration.

In fact, the same RD 1075/2014 of December 19, in its article 98.4 recognizes the owner of the declared parcels the right to access the requests for direct aid from the last PAC campaign on the parcels of his property and the Resolution of January 15, 2019, of the General Directorate of the Cadastre, which approves the regime for the establishment and operation of the Cadastral Information Points (PIC), articulates the procedure email to access this information.

Specifically, article 98.4 establishes the following:

"4. The cadastral owner of the plots on which the enclosures are located, the object of a request for help, as interested in the cadastral communication procedure contained in article 14.e) of the revised text of the Real Estate Registry Law, approved by the Royal Legislative Decree 1/2004, of March 5, will have the right, with observance of the rules for the protection of personal data, of access to the information relating to the submission of requests for direct aid on their plots and the crops declared . The electronic consultation of this information can be carried out by the cadastral owner by authenticating himself in the electronic headquarters of the Cadastre with a digital certificate issued by one of the certification authorities recognized by the Directorate General of the Cadastre or by accessing said headquarters through the points of cadastral information (PIC) through the accreditation granted by your national identity document."

On the other hand, with regard to the damage that the access could cause to the privacy of the person requesting the aid, it is clear that granting access to this information to the person claiming involves revealing personal information that may affect different personal spheres of the applicant, mainly the economic and patrimonial sphere. However, to the extent that the claimant is the owner of the lands declared by the applicant farmer, it can be expected that he already knows the identity of the applicant or can easily know it through other means.

Therefore, in the weighting of the rights at stake regarding access to the information of the aid applicants referred to in the claimed files, the claimant's right of access to public information about the right to the data protection of those.

However, as has been explained, the information about the applicant that must be contained in the initial declaration of these files includes data that may be considered unnecessary for the purpose pursued with the access. In accordance with the principle of minimization provided for in Article 5.1.c) of the RGD, personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed, therefore, it will be necessary to eliminate that information that is unnecessary for the purposes mentioned, such as the information referring to your spouse, marital status, address, etc.

Full access to the applications of the PAC files would allow the claimant to access the personal data not only of the applicant and beneficiary of the aid but, as we have pointed out, also to the data of third parties who may be owners of other plots

declared by the applicant in his request. It does not seem, a priori, that the information of these third parties may be necessary for the purpose for which the claimant bases the access. Also, for the purpose of controlling the management of the public administrations of the funds intended for aid and subsidies, it is also not relevant to know the information relating to the estates of these third parties.

Consequently, it will be necessary to exclude from access the information contained in the requests relating to other parcels of which third parties are the holders, or other information relating to the applicants other than their identification.

In fact, this was the criterion followed by the Department, which informed the claimant about the identity of the people who had included in their requests the plots of their property as well as the rest of the information linked to these parcels included in the initial declarations or requests, removing from them the information relating to other parcels of third parties.

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With regard to the resolutions of the files claimed, the personal data that can be expected to contain will be those relating to the beneficiaries of the aid.

It must be taken into account that the regulations governing this type of aid, contained in Regulation (EU) no. 1306/2013 of the European Parliament and of the Council of December 17, 2013 on the financing, management and monitoring of the Common Agricultural Policy, establishes that a certain degree of information must be published on the beneficiaries of the aid, and that this information must include data on the identity of the beneficiary, the amount awarded and the fund from which it comes, the purpose and nature of the measure in question (recital 69 et seq.), taking into account the right to the protection of the private life and pers

Likewise, the Executive Regulation (EU) no. 908/2014 of the Commission of August 6, 2014 establishing provisions for the application of Regulation (EU) no. 1306/2013 of the European Parliament and of the Council in relation to paying bodies and other bodies, financial management, settlement of accounts, rules relating to controls, guarantees and transparency, sets out the criteria to be applied by member states for comply with the publication obligations of the beneficiaries of the funds, of the amounts received by them, as well as of the municipality in which they reside or are registered (Considerations 32 to 38) and (articles 57 and 58). and provides that the information must appear on a single website "available through a search tool that allows users to search for beneficiaries by number, by municipality to which reference is made in article 58 of this Regulation, by amounts received either by measure or by a combination of these data and extract all the corresponding information as a unique set of data". (article 59).

It is worth saying that, in addition, the control of the use of public funds by citizens fits perfectly with the purpose of the LTC. Thus, according to its statement of reasons, "it obliges citizens, in accordance with the principle of responsibility, to account for their activity and the management of the public resources that have been made available to them." . For its part, article 15 of the LTC regulates the obligations of active advertising in relation to the



public the data of the beneficiaries of the subsidies, except for subsidies and public aid granted for reasons of social vulnerability.

Therefore, the claim is made on information related to a matter, the subsidy, governed by the principle of publicity.

In this case, in the balancing between the right to data protection of the beneficiaries of the aid and the right of access to the information of the claimant of the information, it is necessary to take into account, first of all, that, as has been explained, both the aid regulations and the transparency regulations provide for the identity of the beneficiaries and the amounts received by them to be made public. In fact, this information is available and freely accessible via the internet on the websites enabled for that purpose in accordance with Community regulations.

In addition, as has already been pointed out, the claimant has the right to know the identity of the aid applicants, therefore, in the same sense, he must be able to know the identity of the final beneficiaries of those aid.

In short, the data protection regulations do not prevent the claimant from being given access to the PAC aid decisions, as the Department has already provided.

However, the claimant states that he wants to know the amount of aid that corresponds to his plots. The Department states that it does not have this detailed information. Regardless of whether or not the system for calculating aid amounts can make this individualization of the requested information possible, from the point of view of data protection regulations, and for the reasons already stated, there is no would be prevented from providing the claimant with this information related to his estates, should the Department have it.

## Conclusions

From the point of view of the data protection regulations, it is possible to provide the person making the claim with the requests for the claimed PAC files relating to the properties of their property to which the claim refers, excluding the information regarding in the plots declared to be owned by third parties. Information can also be provided on the overall amount of the aid granted in respect of these declarations and, if available, on the amount corresponding to the declared properties owned by the claimant.

Barcelona, January 12, 2022