

IAI 83/2021

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 submitted by a citizen against a Department of the Generalitat, for the denial of access to information on the Register of people who attend the Palau de la Generalitat

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted by a citizen against the Department, for the denial of access to information on the Register of people who come to the Palau de la Generalitat.

After analyzing the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the report of the Legal Counsel, the following report is issued:

#### Background

1. On August 23, 2021, a citizen submitted a letter to the Department, in which he requested to know the "access control to the Palace of the Generalitat", specifically:

"I request the following information: The details of each and every person who has accessed the Palau de la Generalitat from January 1, 2021 to the present day. I request that for each one of them be indicated: the number and details of the employment of the person making the visit, the date of the visit, the number and position of the person visited in the complex and the time of entry and the exit to the complex. I request all the information in a reusable format such as .csv or .xls and I remember that in a case like the present the right of access to public information and accountability clearly prevails. The public has the right to know who is agreeing to visit high officials and other public workers of the Presidency. In no case are specially protected personal data requested, a reason that could be used to directly deny the request due to it."

2. On November 5, 2021, the applicant submits a complaint to the GAIP, in which he states that he has not received the requested information. According to the claimant, "The Presidency claims that it does not keep the data for that long and that it only has them for the last month. In that case, you should apply partial access and deliver at least that last month."

3. On November 9, 2021, the GAIP requests the person making the claim to provide a copy of the Department's response to the request for information that is the subject of the claim. On November 10, 2021, the claimant provides the GAIP with a copy of the Department's Resolution of September 23, 2021, which rejects the request for access to the requested information and informs the claimant that can access the information relating to the contacts with interest groups of the senior officials of the Generalitat through the Open Government Portal.

4. At the request of the GAIP made on November 10, 2021, the claimant informs that the Resolution of September 23, 2021, was notified to him on November 4, 2021.

5. On November 11, 2021, the GAIP informs the Department of the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to public information, and the identification of the affected third parties, if any.

6. It is stated in the file that on November 15, 2021, the Department communicated to the GAIP the designation of the representatives of the Department at the mediation session, a procedure that the claimant would have requested, as stated in the claim made to the GAIP on November 5.

7. On November 29, 2021, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

7. On November 30, 2021, the GAIP sent this Authority a copy of the Department's report of November 29, in relation to the claim presented.

#### Legal Foundations

I

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

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

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected (Article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereafter, RGPD).

Therefore, any other limit or aspect that does not affect the personal data contained in the requested information is outside the scope of this report, as would be the case of the limit established in article 21.1.b) of the LTC, relating to the investigation or sanction of criminal, administrative or disciplinary infractions, the application of which could lead to the claimant's right of access being denied or restricted for the purposes of protecting the investigation .

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 claim is lodged against the denial of access to information relating to the register of people who would have accessed the Palau de la Generalitat from January 1, 2021 until the time of making the request (August 23 of 2021), specifically, "the number and details of the employment of the person making the visit, the date of the visit, the number and position of the person visited in the complex and the time of entry and exit to the complex."

The data of the natural persons who have accessed the Palau de la Generalitat during the period to which the request refers, as well as the data of the people receiving the visit, are personal data and are protected by the principles and guarantees of the data protection regulations.

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

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1). The mentioned article 2.b) LTC defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the one supplied by the other obliged subjects in accordance with the provisions of this law".

State Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The Department's Resolution, dated September 23, 2021, does not accept the request for information given that, according to said Resolution, the Department would not have the requested information.

As can be seen from the Resolution of September 23, 2021, and as reiterated in the report of Department of November 29, 2021, issued at the request of the GAIP, the information requested by the claimant (referring to physical persons who access the Palau de la Generalitat and make a visit, the person visited and the date and duration of the visit), would be part of the

"Presence control" treatment, from the Department's Treatment Activity Register (RAT).

According to the information available on the RAT on the Department's website, in the treatment of "Presence control" "Identifying data, Special categories of data or sensitive data, Personal characteristics, Professional employment details" are processed, with the purpose of "Controlling access to the buildings of the Department's administrative offices and the bodies that depend on them that are within the Department's access model", and foresees, as categories of interested parties: "Employees, Citizens and Residents, Public Charges, Suppliers". The RAT provides for a conservation period of "less than a year" for this treatment.

The same report of 29 November grounds the denial of access to the information requested by the claimant, in that "(...) the building access control application is configured in such a way that, in automatic, the data that had been collected 30 days before is destroyed daily. In this sense, taking into account that, in accordance with article 53.2 of Decree 8/2021, of February 9, the requested information must be temporarily pre-existing at the time of the submission of the request, it becomes materially impossible estimate the access request submitted and deliver the information since, at the time of resolving the request, the application did not contain any data prior to 8/23/2021, the date of the request access to public information.". The same report adds, given the expected retention period, that "it would not be justified in this case to cut the data to deliver the information of the last month (...)."

It is clear that if the Department does not have the required documentation (because it has been removed), the regime of access to public information provided for in said legislation would not be applicable. However, at least he would have the information relating to the month prior to the request, without prejudice to the fact that he may also have information through other means about the people who have been able to access the Palace.

According to the Department's report of November 29, "(...) even if the requested information is available, the access control to the buildings is considered not to be public information as defined in article 2 b) of Law 19/2014, of December 29, since this information is not available in the exercise of the functions of the administration but with the sole purpose of guaranteeing the safety of the buildings. It is, therefore, information collected on a temporary basis and access to which is not considered to be of public relevance for the purposes of monitoring Government action."

However, taking into account the transparency legislation (art. 2.b) LTC and art. 53 RLTC), that the information that is kept obeys security or other reasons is not relevant when qualifying it or as public information. To the extent that it is information held by the Administration, it must be considered public information for the purposes of transparency legislation.

For all this, for the purposes of this report, the information about the visits held by the Department at the time of the request (August 23, 2021) is public information (art. 2.b) LTC) and as such is subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or

restricted by the causes expressly established by law (article 20 et seq. LTC). Specifically, and with regard to the protection of personal data, it is necessary to examine in this report whether this right should prevail or not, in accordance with the criteria established in articles 23 and 24 of the LTC.

### III

The person making the claim requests to know the register of people who come to the Palau de la Generalitat, specifically, "the number and details of the employment of the person making the visit, the date of the visit, the number and position of the person visited in the complex and the time of entry and exit to the complex (...)". Therefore, the requested information would affect, on the one hand, natural persons who visit the Palau de la Generalitat and, on the other, high-ranking officials and public workers who receive a visit.

At the outset, according to article 24.1 LTC: "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."

According to article 70.2 of the RLTC: "2. For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone number are purely identifying personal data and the addresses, postal and electronic, of professional contact, referred to the staff in the service of the public administrations, senior positions and managerial staff of the public sector of the public administrations. (...)."

It should be added that article 9.1.b) LTC obliges the administration to make public on the transparency portal, "the internal organizational structure of the Administration and of the bodies and entities referred to in letter a), with the identification of the heads of the various bodies and their professional profile and career."

Thus, the same law provides that citizens can identify the people who hold public positions with a certain responsibility in decision-making, an indispensable mechanism for evaluating the management of public resources and guaranteeing accountability.

In addition, people interested in an administrative procedure also have the right to know, based on the provisions of article 53.1.b) of Law 39/2015), the identity of the authority or public worker who processes the procedure, although, given the information available, the request does not refer to information from a procedure in which the claimant has the status of an interested party.

However, the claimant does not only request to know the identity of workers or public officials (art. 24.1 LTC), but asks to know if they have received visits from third parties. Therefore, it does not seem that only on the basis of the provision of article 24.1 LTC this information can be provided.

### IV

In principle, it can be presumed that the purpose or the reasons for the visits that take place at the headquarters of a public administration are framed and directly related to the public activity of this. Thus, the disclosure of the name and position of the people participating in this meeting, or the date on which it takes place, does not seem to imply access to specially protected data of these people (art. 23 LTC).

However, it cannot be ruled out that the knowledge of the participation of certain people in these visits may end up revealing data of this nature.

This could happen, for example, in the case of visits by representatives of a trade union, a political party, members or representatives of a religious denomination, representatives of associations of patients affected by a certain disease or people who suffer from disabilities, or representatives of groups of a certain sexual orientation.

According to Article 23 LTC "Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, affiliation trade 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 entail a public reprimand to the offender, unless the affected I expressly consent to it in writing that must accompany the request."

In these cases, providing the information relating to the fact that the visit took place (date and duration of the same), with the identification of the people who carried out the visit, could allow the disclosure of this type of information

Therefore, and unless it is a matter of cases in which the interested person himself has already made his status as a member or representative of the entity manifestly public, it is clear that in these cases the data protection regulations, in connection with the transparency legislation, would not allow providing information about the visit made by natural persons in this case.

A different issue from the perspective of data protection is that in these cases, only the reference to the entity, association, collective or company in question is facilitated, without identifying specific natural persons. This possibility would not be contrary to the regulations for the protection of personal data (consideration 14 RGPD).

v

Regarding access to the data of the people participating in these visits (whether workers or public officials, or the people who make the visits), who do not deserve special protection, in accordance with article 24.2 LTC, a prior weighting must be done between the different rights and interests at stake:

"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. (...)"

In matters of good governance, Article 55.1 LTC subjects senior officials to a series of ethical principles and rules of conduct under which senior officials must act, including:

"c) The transparency of official activities, acts and decisions related to the management of public affairs entrusted to them and their official agenda, for the purposes of publicity of the Register of Interest Groups, established by Title IV."

Thus, at the outset, it must be taken into account that visits to public officials of the Department could occur, at the outset, by other public officials of the Administration (art. 2.f) LTC), in the framework of the exercise of powers or functions attributed to the Department.

Without prejudice to the considerations that will be made later, taking into account the aforementioned regulatory provisions that enable access to merely identifying information related to the public activity of the Administration (art. 24.1 LTC), the data protection regulations would not prevent, for example, disclosing the identity of people who hold public positions and pay a visit to the Palau de la Generalitat for matters directly related to the public activity of the Administration (for example, protocol visits, meetings institutional, etc).

Having said that, it is necessary to refer to the visits of people considered for the purposes of the transparency legislation as "interest groups".

Article 47.1 LTC provides that they must be registered in the Register of Interest Groups:

"a) The people and organizations that, regardless of their form or legal status, in their own interest, that of other people or organizations carry out activities likely to influence the drafting of laws, rules with the rank of law or general provisions or in the preparation and application of public policies.

(...)."

Section 2, of this same article 47 LTC, provides that "the scope of application of the Registry includes all activities carried out with the purpose of directly or indirectly influencing the processes of preparation or application of the policies and decision-making, regardless of the channel or medium used, including contacts with public authorities and officials, MPs, officials and staff serving the institutions, and also voluntary contributions and participation in official consultations on proposals legislation, regulations, legal acts or other inquiries."

The same transparency law expressly provides that information regarding those people considered as interest groups is accessible to citizens through the Register that is created for the purpose, and where all natural persons must be registered

or legal, or other collectives that the Law considers as such, as well as all activities of direct or indirect influence carried out by these interest groups (article 50 a) LTC).

According to article 27.1 of the RLTC:

"

1. The Administration of the Generalitat and its public sector entities must make public, with identification of the name, surname and place of work, and on a monthly basis, the following information:

a) The public agendas of the staff at their service with the rank of general sub-directorate or similar, in relation to the contacts and meetings held with interest groups, in accordance with the terms and requirements that are defined in the regulations current regulator of interest groups.

In any case, this information must contain the date of the meeting, the name of the interest group, the person or persons acting on its behalf and the object of the meeting with sufficient precision to know the main content."

The right of access is configured - as indicated in the statement of reasons of the transparency law itself - as a right that complements the information that the citizen can obtain through active advertising. Consequently, apart from whether or not the Department is obliged to publish on the corporate website information about the official agenda of certain positions, information that is disseminated on the website (as referred to in the Department's report of November 29, which explains that "meetings and contacts with interest groups are already publicized by high-ranking officials through the Open Government portal"), citizens must be able to obtain the requested information through this means, without prejudice to the legal limit

Therefore, in these cases, the Law prevails over the public interest in the knowledge of said information over the right to privacy of the persons affected, and expressly provides that the persons who apply for registration in the Register have the obligation as declarants, to accept that the information provided is made public.

In addition, according to article 33.1 of the RLTC:

"1. The information relating to the senior positions of the public administrations and the management staff of the following public sector entities must be made public, with identification of the name, surname and position, and on a monthly basis:

a) The public agendas with regard to the contacts and meetings held with the interest groups, in the terms and with the requirements that are defined in the current regulations governing the interest groups.

In any case, this information must contain the date of the meeting, the name of the interest group, and the person or persons acting on its behalf and the object of the meeting with sufficient precision to know the main content."



From all this, it follows that in relation to the visits of natural persons who may be considered interest groups in the terms provided for in article 47 LTC, to the extent that their publicity through the Register of Groups is already planned of interest, from the point of view of data protection regulations there is no disadvantage in providing the person making the claim through the exercise of the right of access information on the identity and position of natural persons, including in the case of legal entities, the identity of the person or persons representing them in the visits to the Palau de la Generalitat that have taken place and, where appropriate, of the officials and staff of the Department who have been able to

## VI

Apart from interest groups, there may also be visits by natural persons to deal with any matter that affects or interests them, who do not have that consideration.

Included in this case, among others, would be the activities referred to in article 48 LTC expressly excluded from the Register of Interest Groups, that is, those "relating to the provision of legal or professional advice directly linked to defend the interests affected by administrative procedures, those intended to inform a client about a general legal situation, conciliation or mediation activities carried out within the framework of the law, or advisory activities carried out for informational purposes by to the exercise of rights or initiatives established by the legal system". It would also be necessary to include in this case the visits or meetings held with interested persons to deal with matters related to administrative files of a different nature that must be dealt with or processed in any of the areas of action of bodies that are part of the organizational chart of the Department.

The fact that the LTC excludes this type of meetings or visits from registration in the Register of Interest Groups, and therefore from the obligation to publicize these meetings, does not imply that in certain cases it cannot be justified to provide a citizen with information about the people who have been able to meet with public workers or high-ranking officials of the administration, within the framework of actions specific to a certain administrative

However, in the case examined, and for the purposes of the weighting (art. 24.1. LTC), the claimant requests indiscriminate access to any visit maintained by people who visit any worker or public official in a period initially of 8 months ( from January 1, 2021 until the date of the request, August 23, 2021), and, under the terms of the claim to the GAIP, in a period of one month, without specifying provide more information on the motivation of the request, beyond pointing to accountability and that "citizenship has the right to know who is visiting high-ranking officials and other public employees of the Presidency."

As this Authority has long held, although the LTC does not require citizens who exercise the right of access to public information to give reasons for their request, this motivation could help with the necessary weighting.

In any case, it is necessary to refer separately to natural persons who visit officials or public employees of the Administration in the name and representation of legal persons (companies, entities, associations, etc.), and to natural persons attending acts or meetings on behalf

own, since in one case and another the impact on people's privacy can be different. It will also be necessary to refer to the possibility of giving the information referred to any public worker who receives a visit.

a) With regard to the meetings held with people who act on behalf and representation of legal entities, it must be taken into account that providing information about their identity would only affect, in principle, the professional or work sphere of these people.

Despite this, it cannot be ruled out that the knowledge of the participation of certain people in these visits may end up revealing data included in special categories of data (art. 9 RGPD). This could happen, for example, in the case of a visit by representatives of a trade union, a political party, representatives of a religious denomination, representatives of associations of patients with a certain disease or people who suffer from disabilities, or from representatives of groups of a certain sexual orientation.

In these cases, and unless it is a question of cases in which the person concerned has already made his status as a member or representative of the entity manifestly public, it would be necessary to provide information on the fact that a visit has taken place, indicating, if applicable, and in the terms indicated, the public positions or the bodies or services of the Department that attended the visit, and providing exclusively the reference of the entity, association or collective in question, unless it is counted with the express consent of the affected persons or in the case of data made manifestly public by these persons (cases provided for in article 9.2 a) i) RGPD and in art. 15.1 LT).

Beyond these cases, it should be borne in mind that the scope of competence and, therefore, of the services and matters dealt with by the Department is broad and can affect matters of a very diverse nature.

Thus, it could be visits by natural persons, related to administrative files, sanctioning files, or of another nature, maintained with the Administration, and therefore, among these people there may be positions of the same legal entities that represent, but there could also be, for example, lawyers or external advisers hired by companies to resolve a specific case.

The truth is that, in order to carry out a control and inspection of the actions of the Public Administration, it seems that it could be sufficient to know which is the company or entity with which a certain public official has met. The legal person is the one who must be considered interested in these cases. This information would already seem sufficient to be able to have an idea of the visits made, and in accordance with the principle of minimization (art. 5.1.c) RGPD) the name and surnames of the specific person or persons attending could be omitted from this list in the name and representation of these companies.

All this, without ruling out that once the information has been obtained, it may be relevant in some cases to know who is the person who has met with certain high-ranking officials (in line with what is provided for in article 33.1 RLTC) to deal on behalf and representation of legal entities affected by a specific matter. Assumption that could force a different weighting.

b) With regard to access to information about the visits of natural persons acting in their own name, it should be borne in mind that providing information about who these persons are could imply an interference in the privacy of the participants that will affect more or lesser degree depending on the matter in question.

In this sense, within the variety of specific matters or files that may affect a natural person in relation to the Public Administration, it cannot be ruled out that the information requested may reveal data included in the special category of data (for example, a visit related to the processing of subsidies for disabled people), or referred to the commission of administrative infractions as it is a disciplinary file.

Even, in certain cases, giving access to the identity of this person, together with the reference to the service or public body that attends, may be sufficient to provide information about the matter, file or procedure related to the visit .

This may, in some cases, imply an interference in the privacy of the affected citizens that should be justified, if appropriate, in the intended purpose of the access. Even if the claimant does not request to know the reason for the visit, it must be remembered that the service or area in which a public worker provides services is easily identifiable. Bearing this in mind, in many cases simply with the information requested, the object or reason for the visit could be easily deduced.

Considering this, and that the purpose of the access (art. 24.2.b) LTC), on the part of the claimant, is a generic invocation of accountability, it does not seem that knowing the identity of each natural person who has related to the Department and that has been attended to in a visit, is relevant enough.

It could be, for the purposes of contrasting the administrative action and the purported accountability, to know for example the number of visits made by citizens to a certain service or body of the Department, or even, where appropriate, the duration of these visits.

However, this information could be provided anonymously, without it being necessary, from the perspective of data protection, to provide the identity of the specific people who visit the Department.

Be that as it may, in the case analyzed, generalized and indiscriminate access is being requested to all visits made to any public worker or public position in the Department, without specifying specific reasons on the part of the claimant that allow the invasion of privacy to be considered and justified which would mean access to the identity of all the people who have been able to meet with public workers, for any matter.

In these terms, and for the reasons stated, it does not seem justified to provide the information in the requested terms.

c) In relation to the cases a) and b), mentioned, it also does not seem necessary to disclose the identity of each and every public worker who receives work visits to the Department.

In relation to the visits that can be attended by high officials (to which the consultation also refers), we have already seen that the regulations provide that the public agenda of these must be, in the terms indicated, public knowledge. Taking this into account, it does not seem that for weighting purposes it could be affecting for these people, who hold jobs of special responsibility, that information can be given about the visits they attend.

As has been pointed out, the provisions of articles 27.1.a) and 33.1.a) of the RLTC provide only for an obligation of transparency with respect to senior positions and managerial staff and staff assimilated to deputy general managers, but not with respect to any other public worker. As has also been pointed out, providing the identity of any public worker who receives a work visit to the Department would go beyond what is provided for in article 24.1 LTC.

Outside of these expressly foreseen cases, it does not seem that knowing which specific public official, from a specific area or service, has attended a specific visit, can be relevant (unlike what is foreseen for high officials or, if applicable, for personnel with a certain level of responsibility), for the purposes of the general duty of accountability of Public Administrations to citizens.

It should be borne in mind that the purpose of the access seems to be related, according to the available information, to wanting to check whether a visit has taken place and whether this has been attended to by the Administration. From this perspective, in terms of knowing the identity of public workers, it could be sufficient to indicate the service or organization that attended a certain visit, without the need to indicate the identity of the public worker or workers who specifically attended.

This is without prejudice to the fact that in certain cases the visits received by a certain employee of the Administration may be relevant. In these cases, it would be necessary to examine it in light of the specific circumstances, but without it being possible to conclude that this possibility justifies a generalized access to the identity of all the people who have received any of the visits.

For all this, the following conclusions are made,

#### **conclusion**

The data protection regulations do not prevent access to information relating to visits by persons belonging to interest groups, nor to information on visits directly related to the public activity of the Administration (protocol visits, meetings institutional, etc).

Information about visits by people who act on behalf and representation of legal entities, for purposes other than those of interest groups, can be provided by omitting the identity of the specific person who represents them, unless consent is obtained expressed by the people affected or it is data made manifestly public by these people.

**The data protection regulations would not enable the general communication of the identity of third-party natural persons who act on their own behalf and who visit the Department's premises.**

**Without prejudice to the obligation of transparency regarding the public agendas of high-ranking officials or managerial staff and staff assimilated to general sub-directorate, it also does not seem justified to facilitate generalized access to the identity of each and every public worker with**

**Barcelona, January 12, 2022**

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