

IAI 84/2021

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 City Council for the denial of access to information about musical training grants

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 City Council, for the denial of the 'access to information on the musical training grants granted in 2019, "to be able to verify detected irregularities".

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 February 9, 2021, a citizen submitted a letter to the City Council, requesting information on the 2019 scholarships, specifically:

"(...). I am requesting information regarding the granting of scholarships in order to be able to verify some data that seems to me to be irregular. I am attaching a letter detailing my request, the basis of the aid and the table of concessions."

The request is accompanied by a letter, addressed by the claimant to the requested administration, detailing the reference to the different files to which access is requested, as well as information on the audit that would have been carried out term, as explained by the claimant.

2. The file contains a letter from the administration, dated June 3, 2021, addressed to the applicant, in which it is explained that a query had been made to the Catalan Data Protection Authority regarding the access request made, even though the information provided is not substantiated.

3. On November 12, 2021, the applicant submits a claim to the GAIP.

He explains that the City Council has partially given him the information, and that he wants to know information about the music training grants in question, "to be able to verify the detected irregularities", since, according to the claimant, "The calculations of the grants are irregular and incomprehensible and that is why even though I have been granted the aid I have not been paid."

The claimant accompanies her claim to the GAIP with a letter, dated November 15, 2021, in which she explains in more detail that she would have been granted, as aid to finance part of her son's musical studies, an amount of ... euros, but that only a lower amount would have been paid to him, "alleging budgetary reasons", and requests that "my right to access the requested data be recognized in order to be able to the corresponding verifications, and that the City Council (...), as the funding body, be urged to deliver the requested information, without any further delay."

4. On November 19, 2021, the GAIP requests the claimant to specify the object of her request, "expressly pointing out what is the information that would not have been provided to you or to which you would not have been able to access."

5. In response to the requirement of the GAIP, on November 22, 2021, the specific claimant who wants to access "the fiscal and accounting information of the files to be able to verify the data, and especially these files where there are more irregularities I detected." The claimant lists a total of 16 files, indicating the reference of each of these files, and adds: "I also request to be able to access the accounting audit that has been carried out in relation to all the processing of these scholarships (year 2019)."

6. On November 23, 2021, the GAIP requests the City Council to issue a report on the claim submitted, identify the third parties affected by the access and send the complete file to which it refers. Likewise, the GAIP requests the City Council that the claimant has requested the mediation procedure. On November 26, 2021, the City Council informs the GAIP of the people who will attend the mediation.

7. On December 1, 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.

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 claimant requests from the City Council information on the musical training grants that are granted. In the claim submitted to the GAIP on November 12, the claimant states that:

"1. Given that I am only being paid a portion of the amount awarded due to budget limitations, detecting certain irregularities in files prior to mine, it makes me think that if I can clarify if these files are incorrect and if the calculations are or not incorrect, this would affect the amount I was supposed to receive, as I feel very disadvantaged right now.

2. That there are many tax concepts that do not fit and that without being able to see the data of the files there is no way to verify if the processing has been done correctly.

3. That I requested to see the audit, which is supposedly being done, but was never even told who had done the audit.

(...)."

In the letter that the claimant attached to the access request submitted on February 9 to the City Council, the claimant states that:

"(...) I am asking you to send me the certificate of this audit, especially with regard to the files I am detailing, since the information contained in the list of resolutions is incongruous and I need verification:

‣ Files (..) with annual family income and available personal income, negative.

‣ File (..) with annual family income and disposable personal income =0.

‣ Files (...) with annual family income of less than €1000.

I would need to verify that these amounts that appear in the listings agree with the aforementioned income statements and the calculation detail of the total income of the family unit and the total available income to verify that this has been done correctly, since it is not possible have a personal disposable income in the negative. I would also like proof from the audit that the income statements of these files have been correctly validated and delivered to

In relation to the file (..), the claimant explains that: "(...) for this file, she would like to know the date of birth of the student and she would also like to know the total price of the course and the calculation made by reach the granted amount of ..€. In addition, know the reason why the threshold of the amount of the aid mentioned in the rules has been exceeded.

I request these justifications in writing so that I can evaluate them carefully and that they serve as justifications in case of going to other instances in order to be able to exercise my right of defense or appeal of the resolution, if place (...)."

We note that in this letter, the claimant identifies a total of 10 files on which she wants to obtain information. However, in the letter that the claimant sent on November 26, 2021, at the request of the GAIP, in order to clarify what specific information she is requesting from the City Council, the claimant asks for "fiscal and accounting information" of a total of 16 files related to the granting of aid (some matching those previously requested and others not), as well as being able to access the "accounting audit" that would have been carried out in relation to the processing of scholarships (2019).

If the claim for access is based on these terms, it must be agreed that the data of the natural persons applying for training aid, the subject of the claim, as well as the data of other natural persons that may appear in the files that identifies the claimant, that identify them or that allow their identification, are personal data and are protected by the principles and guarantees of the data protection regulations (art. 4.1 RGPD).

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 (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 of 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 (LT) is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

Therefore, at the outset, the information available to the City Council as the claimed administration, regarding the procedure for processing and awarding the training grants to which the claim refers, is public information for the purposes of transparency legislation.

III

According to the information available, in the case we are dealing with, the applicant participated in the call for financial aid for his son's education. The administrative files to which you intend to access would correspond, according to the information available, to other people participating in the same call for aid.

In accordance with the provisions of article 70 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), the administrative files constitute "[...] the ordered set of documents and actions that serve as background i

basis for the administrative resolution, as well as the proceedings aimed at executing it" (first section), excluding information that has an auxiliary or supporting nature, such as notes, drafts, opinions, internal reports, etc. (third section).

In the Aid Basis document, reference is made to "(...) an Aid Program for families with financial difficulties whose children have undertaken musical studies during the 2018-2019 school year."

According to section 4 of the Bases, one of the requirements for the grants is that the recipients are students of private music schools, born between January 1, 2001 and December 31, 2014. Therefore, the beneficiaries of the aid, whose data appear in the requested files, are mostly minors. For this purpose, it is necessary to take into account the data protection regulations, which consider minors as a vulnerable group, for the purposes of this protection (recitals 38, 58 and 75 RGPD).

According to section 2 of the Bases, the grants will be governed by Royal Decree 951/2018, of July 27, which establishes the income and family wealth thresholds and the amounts of scholarships and study grants for the 2018 academic year -2019. According to article 9 of Royal Decree 951/2018: "1. The family income for the purposes of scholarship or aid will be obtained by aggregating the incomes of each of the computable members of the family who obtain income of any kind

Section 13 of the Basics specifies the documentation that must accompany the application:

1. Photocopy of the DNI/NIE or Passport in force of the applicant.
2. Coexistence flyer of the family unit in the municipality (...), issued by the town hall with a date of issue of 2018.
3. Photocopy of the family book with all its components.
4. In the event of separation or divorce, provide a copy of the court judgment certifying who holds custody. If the judicial procedure is in process, a Certificate of Accreditation from the Court will be provided as it is being processed and/or the Regulatory Agreement if it exists that determines who has custody of the minor.
5. If applicable, photocopy of the valid large family card.
6. If applicable, photocopy of the single-parent family card in force.
7. If applicable, Certificate of recognition of the degree of disability or handicap of any member of the family unit, recognized by the Generalitat de Catalunya.
8. Photocopy of the first page of the bank book of the applicant or the parent who legally represents him in his application or certificate issued by the bank where the current account of the applicant (IBAN) is located and holders of the account
9. Income Statement (IRPF) for the year 2018 with proof of its presentation to the Tax Agency or income imputation certificate for the year 2018 in which the income obtained during the 2018 financial year is stated or if you have had no income (AEAT), of all members of the family unit over 16 years of age.
10. Certificate issued by the school showing the following information: school details, applicant details, subjects taken (subject name, total months taken, hours of the weekly subject with indication of collective and/or individual class hours), total cost of the course, and must be signed by the school director.

11. Bank receipts or cash payment receipts (with the corresponding legal and fiscal identification of the school and the person making the payment) signed or with the school's "paid" stamp.

The Bases establish the threshold of family income that can be calculated for the purposes of granting aid (section 6). The same section 6 adds that "(...) all applicants must submit the additional documents that are requested of them once their application has been reviewed (...)."

Thus, in the files there will be information not only of the beneficiaries but also, if applicable, of the different members of the family unit, including "the father and mother of the applicant; the guardian or person in charge of the custody and custody or protection of the minor, if applicable; the applicant's unmarried siblings under the age of 25 provided they live in the same address as the applicant or of legal incapacity, subject to parental authority; grandparents who live in the same address as the applicant." (section 14.1 Bases). The files will also contain, where appropriate, data on the members of the host family unit, in case the minor beneficiary of the financial aid is in foster care (section 14.2 Basis).

IV

According to article 20 et seq. of the LTC, the right of access to public information can only be denied or restricted for the reasons expressly established by law.

With regard to the information that contains personal data, such as the files to which the claimant requests access, and which refer to a 2019 aid awarding procedure and which, according to the available information, would be of a closed procedure, to determine the possibility of access it is necessary to assess the type of data in accordance with the criteria established in articles 23 and 24 of the LTC.

It is necessary to refer to article 23 of the 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, trade union affiliation, religion, beliefs, 'racial origin, health and sexual 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 party expressly consents by means of a written which must accompany the application."

On this, we also refer to the provisions of article 15.1 of the LT.

According to article 70.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information: "For the purposes of what is provided for in article 23 of Law 19/2014, of 29 December, it is up to the applicant to provide the express and written consent of the holders of the personal data affected by the requested access. The public administrations can transfer the request and the consent to the person holding the data in order to certify the written consent provided, in case of doubt about its veracity.

It does not appear from the available information that the claimant has the consent of the other affected persons.

In the event that the public information that is requested contains information of specially protected categories, the confidentiality of this information must be preserved and it must be excluded from the claimant's access, unless consent is obtained or any of the enabling circumstances provided for in article 15.1 LT occur.

According to the information available, the public information claimed could contain data from specially protected categories, such as health data of different members of the family unit of the applicants (disability or dependency situations), personal information that in any case must be considered as specially protected and which, consequently, should be excluded from the claimant's access, ex. art. 23 LTC.

In conclusion, at the outset, access to the documentation that forms part of the files listed by the claimant (and, where applicable, the information that may be contained in the audit referred to by the claimant) should be denied, which contains specially protected personal data, unless the express written consent of the affected persons is available.

v

With regard to access to the rest of the requested public information, whether it is the files of other applicants for training grants, a balance must be made between the right to data protection of the affected persons and the public interest in the disclosure of information in accordance with the provisions of article 24 of the LTC, according to which:

"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 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the affected people 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. (...)"

Without prejudice to being able to give access to merely identifying data in terms of articles 24.1 LTC and 70.2 of Decree 8/2021, which may be contained in the requested information,

with regard to the information relating to the persons applying for training aid and other persons in their family unit, whose information is included in the respective file, and for the purposes of weighting necessary, the following must be done in advance.

For the information available, those affected must provide a series of documentation that not only refers to categories of specially protected data that must be excluded from access (eg art. 23 LTC, to which I have already referred), but also to other information, deserving of special reservation or confidentiality in view of the concurrence of certain circumstances and that may have been alleged by the interested parties (data on minors, data on unemployment or other benefits received - for example, if any member of the family unit is in receipt of benefits for dependency or disability, in the case of single-parent families, the existence of disability situations, information on judicial separation or divorce proceedings, etc.

The information contained in the files, relating to the social, economic and patrimonial situation of the cohabiting family unit, is information that, by itself, can allow us to deduce the concurrence of certain personal or family circumstances that may reveal situations of socio-economic difficulty or special vulnerability for economic reasons. This is clearly evident from the Rules of the call, the object of which is an "Aid Program for families with economic difficulties (...)", which determines as a scale, mainly, the income threshold of the applicant families (based on the provisions of Royal Decree 951/2018, according to section 2 of the Bases), and which also takes into account other personal and family circumstances that may indicate an element of vulnerability.

This, without ruling out that some file may contain data related to gender violence (a matter referred to in Royal Decree 951/2018, mentioned above), or information related to a procedure for the child's abandonment (in the event that the minor applicant is in foster care (section 14.2 Basis).

It is clear that giving access to the files that contain this information could lead to a significant interference in the rights to privacy and the protection of personal data of the people affected, to the extent that the fact of revealing the existence of a situation of 'special need (situation of difficulty or socio-economic vulnerability), can affect different levels of the social, personal and family environment of the people affected.

In addition, and in accordance with article 24.2, section c) LTC, for weighting purposes it must be taken into account that the applicants and, therefore, the people who in the first instance would be affected by the communication of information would be, for the most part, minors. From the perspective of data protection, as has been pointed out, the data protection regulations consider minors as a vulnerable group, for the purposes of this protection (recitals 38, 58 and 75 RGPD) .

It is also appropriate to take into account the privacy expectations that not only the applicant or their parents or guardians in the case of a minor may have, but also the rest of the family unit, regarding the fact that their identity, as well as other personal information related to your social or economic situation, or in short, information related to situations of vulnerability, will not be disclosed.

In this regard, it should be borne in mind that, in principle, the regulations provide that the procedures for granting aid must be competitive (art. 22 Law 38/2003, of November 17, general subsidies (LGS)), as would be the case at hand (paragraph 3 of the Bases).

Now, although the regulations state that it is necessary to publish who the beneficiaries are (art. 45.1.b) Law 39/2015, of October 1, on the common administrative procedure of public administrations, and LGS), it is necessary to have given that limitations are established on the dissemination of

Specifically, and for the relevant purposes, although article 15 LTC provides for the publication of certain information on subsidies and public aid granted, it is important to bear in mind that section 1.c) of the same article 15 provides that:

c) Subsidies and public aid granted, with an indication of the amount, the purpose and the beneficiaries. This information must include grants and aid, must be up-to-date and must refer to the last five years. It must also include subsidies and grants awarded without advertising and competition if these requirements have been exempted, in the cases established by law. In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved. (...)."

Likewise, according to article 45.5 of the RLTC: "It is necessary to preserve the identity of the natural persons beneficiaries of subsidies and public aid granted in any case that involves the disclosure of personal data deserving of special protection and, in particular, for reasons of social vulnerability."

Thus, for the relevant purposes, the transparency legislation expressly provides for the preservation of the identity of the beneficiaries of those subsidies and public aid that are granted for reasons of social vulnerability, as could be the case at hand.

Therefore, it is clear that, for weighing purposes, the fact that an aid procedure is granted for reasons of social vulnerability, entails the need to protect the privacy expectations of those affected in a reinforced way.

On the other hand, for the purposes of weighting, it is also necessary to take into account the purpose of the access (art. 24.2.b) LTC) and the reasons alleged by the person making the claim.

In accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses the purpose he is pursuing and ultimately the reasons why it is interesting to know the information, it adds an important element to take into account as a weighting criterion.

In this sense, article 1.2 of the LTC, provides that the purpose of the transparency law "is to establish a system of relationship between people and the public administration and the other obliged subjects, based on the knowledge of the public activity, encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management".

Beyond this general purpose, in the case we are dealing with the person making the claim bases his request on the purpose of being able to "verify the detected irregularities". In the claim submitted to the GAIP (November 12, 2021), the claimant states that "given that I am only being paid a part of the amount awarded due to the budget limitation, upon detecting certain irregularities in files prior to mine, I it makes me think that if I can clarify if these files are incorrect and if the calculations are incorrect or not, this would affect the amount I was supposed to receive, since right now I feel very harmed." Also, the claimant adds that "without being able to see the data on the files there is no way to verify if the processing has been done correctly."

For this purpose, it could certainly be relevant for the claimant to know whether the calculation provided for in the Bases to determine the amount of the aid in each case has been carried out correctly, since this could have repercussions, as it points out, in the amount of the aid he would have received in his case

However, from the perspective of data protection, this purpose does not justify full access to the entire content of the files of other beneficiaries given that, as has been explained, these contain personal information not only about the calculation that is has done in each case to grant the aid granted, but also the documentation justifying the fulfillment of the foreseen requirements, provided by those affected or claimed by the Administration, relating to the various members of the family unit.

In the case at hand, given that access to the content of other people's files is requested, without being more specific, from the perspective of data protection it must be taken into account that facilitating the requested access would inevitably reveal the existence of circumstances of different people in the family unit, referring to a situation of vulnerability, and would mean a disproportionate access, for the purposes of the principle of minimization (art. 5.1.c) RGPD), to documentary evidence of particularly affecting circumstances for the privacy of those affected (as has been said, among others, banking information and related to the income and income of those affected, information on judicial processes, data on unemployment or other benefits received, information certifying situations of dependency or disability, etc).

It should be noted that in addition to the identifying data relating to the applicant, or the members of the cohabiting family unit, such as first and last name, postal or electronic address, DNI or equivalent document, signature, etc., the file may contain other information - not only in the documentation prepared by the Administration, but also in that provided by the applicants -, such as that relating to the place of birth, nationality, school stage or educational center of the minor, number of siblings (information about large family), or family circumstances (single-parent family), etc., which could end up making the affected people identifiable, without disproportionate efforts, especially depending on the previous information already available to the claiming by other means.

In this sense, given the terms of the access claim, it does not seem that the mere allusion to possible irregularities in the granting of aid by an applicant, without providing any other additional information, and taking into account that the aid is linked to situations of economic vulnerability, can justify access to all the documentation contained in the files, in the terms of the claim.

It should be borne in mind that the purpose of these aids is precisely to prevent or alleviate situations of vulnerability due to social and economic circumstances, and to give access to the files and the documentation contained therein, as requested by the claimant, it could go precisely against this purpose, causing a stigmatization of the people affected.

This, without prejudice to the fact that certain anonymized or pseudonymized information can be provided about the calculations that have been made in relation to the aid requests referred to by the claimant.

On the other hand, it must be remembered that the claimant also requests information from the audit that, according to the available information, would have been carried out.

In this case, from the perspective of data protection, it could be understood that the claimant's right of access could be satisfied, given the intended purpose, by providing her with the information contained in the audit that allows to contrast or verify the calculations that have been made, according to the criteria established in the Basis of the call, after anonymisation or pseudonymisation of the personal data, if they exist.

In any case, the audit, as well as the information that can be provided on the calculation made to grant the aid, in any case, should be provided in an anonymized or pseudonymized form, that is, in terms that do not allow identify the affected people (whether the applicants themselves or other people in the family unit), but which do allow verification of how the scoring was carried out to grant the aid.

In this sense, it is necessary to refer to recital 26 of the RGPD by which "(...) to determine whether a natural person is identifiable, all means, such as singularization, that can reasonably be used by the person responsible for treatment or any other person to directly or indirectly identify the natural person. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment as technological advances (...)"

On the other hand, article 4.5 RGPD defines pseudonymization as "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears separately and is subject to technical measures and organizational measures intended to ensure that personal data are not attributed to an identified or identifiable natural person".

Therefore, the information that can be provided to the claimant about the calculations made in each case must not allow the identification or re-identification of the affected persons.

conclusion

In accordance with the regulations on the protection of personal data, the access of the person making the claim to the full content of the files requested is not justified, given the nature of the personal information of the files and the people affected. This, regardless of what can be done

provide anonymized or pseudonymized information that allows you to compare and verify the calculations that have been made in each case, without allowing the identification or re-identification of the people affected.

Barcelona, January 18, 2022

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