

IAI 85/2021

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 professional association for the denial of the request for access to information regarding the date of registration, leave and reason for it, of two lawyers.

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 professional association for the denial of the sole request for access to information regarding the date of registration, termination and reason for this, from two lawyers.

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 July 19, 2021, a citizen addresses, by email, a professional association requesting the date of enrollment, the date of termination and the reason for termination of two lawyers
2. On the same date of July 19, 2021, the professional association responds to the applicant, by email, indicating that this information cannot be provided in view of data protection regulations.
3. On September 6, the same citizen again requests the same information from the professional association since he considers that there is no sufficient reason for its refusal.
4. On September 8, the professional association again responds to the applicant indicating that it would only be possible to provide the information in the event that they have a judicial office.
5. On September 9, the applicant makes a claim before the APDCAT for the alleged neglect of the right of access that he had previously exercised before the professional association
6. On October 18, 2021, the director of the APDCAT decides to reject the claim for the protection of rights and transfer the claim to the GAIP.
7. On October 29, 2021, the GAIP provisionally accepts the claim against the professional association for processing, but urges the applicant to submit the claim on the form enabled for that purpose.

8. On November 8, 2021, the applicant submits a claim to the GAIP against the professional association for the denial of access to the registration date, termination date of two members and the reason of the leave
9. On date GAIP requests the professional association 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.
10. On November 25, 2021, the professional association issues a report stating that the denial of access is based on data protection regulations.
11. On December 1, 2021, the GAIP requests a report from this Authority, in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to 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 requested information is the date of registration and the date of termination as well as the reason for termination in the professional association of two lawyers.

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".

On the other hand, the data of deceased persons are not subject to protection by the data protection regulations in accordance with recital 27 of the RGPD and article 2.2.b) of Organic Law 3/2018 of December 5 of Data Protection and guarantee of digital rights (LOPDGDD). Therefore, it can already be assumed that if the reason for the termination of membership is the death of the member, the limits on access to information relating to data protection would not apply

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 for the 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 can only be considered based on the legal bases of article 6.1.c) and 6.1.e) of the RGPD when this is 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).

According to article 39 of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, "the public functions of professional associations are:

- a) Guarantee that professional practice complies with regulations, ethics and good practices, and that the rights and interests of the recipients of the professional performance are respected (...).
- b) Ensure the rights and the fulfillment of the duties and obligations of the members and that no acts of intrusion, unfair competition or other irregular actions occur in relation to the member profession, adopting, where appropriate, the measures and actions established by the legal system.
- c) Exercise disciplinary authority over their members, in the terms established by law i
- d) the rules of the professional associations. d) (...)".

The claimant requests from the professional association information on the state of association (date of registration and termination and reason for termination), that is, information that refers to the exercise of public functions of the school. Therefore, with respect to this information, the college is within the scope of application of the LTC, in accordance with article 3.1.b) of this law.

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

With respect to the information requested regarding the reason for the withdrawal of members, it must be taken into account that in accordance with article 22 of the Statutes of the Illustrious Bar Association of Barcelona, published by RESOLUCIÓN JUS/689/2015, of April 10, the person enrolled in the College is terminated when any of the following events occur:

- "a) Loss of any of the requirements required for membership in these Statutes.
- b) Request of the interested person.
- c) Agreement of the Board of Governors for repeated non-compliance with the payment of collegial fees or the financial sanctions imposed.
- d) Final judicial or administrative decision involving the disqualification to exercise the profession.
- e) Expulsion as a result of a firm disciplinary sanction.
- f) Firm disciplinary sanction of disqualification agreed by the Board of Governors.
- g) Firm judicial declaration of incapacity.
- h) Judicial or administrative declaration of firm incompatibility.
- i) Death"

As has already been advanced, the data protection regulations do not apply to deceased persons, consequently, the limits provided for in articles 23 and 24 of the LTC could not be applied to access to information when the reason for the loss of collegial status is the death of the member.

Regarding the rest of the grounds for dismissal from the association referred to in article 22 of the statutes of the professional association, it should be borne in mind that some of these grounds involve the disclosure of special categories of data in terms of article 23 of LTC which establishes "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 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 party expressly consents by means of a writing that must accompany the request".

In this sense, the reason for dismissal provided for in letter d) of article 22 of the Statutes of the College ("firm judicial or administrative resolution that entails the disqualification to exercise the profession"), and also the reasons provided for in letters e) and f) ("Expulsion as a result of firm disciplinary sanction" and "firm disciplinary sanction of disqualification agreed by the Board of Governors"), is information relating to the commission of criminal or administrative offenses with respect to which the transcribed article 23 LTC establishes the limitation to access except that those sanctions entail a public reprimand to the offender.

With regard to the disciplinary regime, as this Authority has previously highlighted in reports IAI 30/2021 and IAI 69/2021, the disciplinary sanctions imposed in the exercise of the public functions attributed to the professional associations is information relating to administrative infractions, in this case of a disciplinary nature.

As stated in the aforementioned reports, Law 7/2006 recognizes professional associations with disciplinary power over their members (article 15, in relation to

article 26.b)) as well as the normative power to develop the disciplinary regime provided for in the same rule (articles 20 and 42).

In the professional field of law, it is necessary to take into account Resolution JUS/110/2019, of 22 January, amending the Regulations of the Catalan Bar of the Council of Illustrious Bar Associations of Catalonia (hereafter, the Regulations of the Catalan Bar), which provides for the disciplinary regime from articles 60 et seq.

The current statutes of the professional association include the power of the Governing Board to sanction both its members and the persons qualified as members by this Board and the professional societies (article 110.1) .

In such a way that, taking into account that we are dealing with possible disciplinary sanctions imposed in the exercise of the public functions attributed to professional associations, we are dealing with information relating to administrative infractions, in this case of a disciplinary nature .

Another of the reasons for the dismissal of the member provided for in article 22 of the Statutes of the professional association is the "Firm judicial declaration of incapacity." (letter g)). It must be taken into account that legal incapacitation is a mechanism provided for in article 199 et seq. of the Civil Code for cases in which persistent physical or mental illnesses or deficiencies prevent a person from governing himself, having as an objective the protection of the interests and rights of the disabled, both on a personal and patrimonial level. Therefore, communicating this reason for termination to the person making the claim would entail revealing the health data of the members

Taking this into account, if the reasons for the disqualification of the lawyers referred to in the claim entail knowing information relating to the commission of criminal or administrative offenses (provided that these do not entail a public reprimand of the offender) , or health data of those lawyers, or other information considered as special categories of data in the terms of Article 23, access to this information should be denied by application of Article 23 LTC, except if with the consent of the affected persons.

In relation to consent, article 70.1 of the RLTC states that "it is up to the person requesting to provide the express written consent of the persons holding 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.

In the documentation that accompanies the request for a report in the case at hand, it is not stated that the lawyers concerned have given their consent to the communication of their data.

#### IV

With regard to the rest of the reasons for leaving the school that do not involve the disclosure of special categories of data in the terms of article 23, as well as with regard to the date of enrollment and the date of withdrawal in the college, the provisions of article 24.2 of the LTC must be taken into account, which provides the following:

"(...)

**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 this article, the possibility of knowing the information that contains personal data that are not considered special categories of data must go through a prior reasoned weighting between the public interest in the disclosure and the right of the people affected . In this weighting it is necessary to take into account all the circumstances that affect each specific case with the aim of determining whether the claimant's right of access or the data protection right of the affected persons should prevail, taking as based on the different elements listed in the aforementioned article.

One of the elements that, in accordance with article 24.2 of the LTC, must be taken into account in the weighting is the purpose of the access. In this sense, although article 18.2 of the LTC provides that the exercise of the right of access is not conditional on the concurrence of a personal interest, and does not remain subject to motivation or require the invocation of any rule, knowing the motivation for which the person making the claim wants to obtain the information can be a

In the particular case, based on the information contained in the file sent, the claimant does not express any other purpose beyond knowing whether the lawyers he is consulting about are in the collegial register.

On the other hand, from the point of view of the transparency regulations, it should be taken into account that the purpose it pursues is "to establish a system of relations between people and the public administration and the other obliged subjects, based on the knowledge of public activity, encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management" (Article 1.2 LTC), or in other words, to establish the possibility of offering tools to citizens to control the performance of public authorities. From the point of view of this generic purpose, it does not seem that revealing the reason for which a member has caused dismissal from a college can contribute to controlling the exercise of the public functions of that college.

In addition, it should be taken into account that Law 2/1974, of 13 February on Colleges Professionals, in its article 10 imposes on collegial organizations the obligation to publish certain useful information for consumers and users, through the single window, in the following terms:

"2. Through the mentioned single window, for the better defense of the rights of consumers and users, the collegial organizations will offer the following information, which must be clear, unambiguous and free:

a) Access to the Register of Associates, which will be permanently updated and which will contain, at least, the following data: number and surnames of the affiliated professionals, membership number, official titles of those in possession, professional address and status of professional qualification (...)"

In the same sense, Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, regulates this obligation in article 40 bis which establishes:

"1. The professional associations must facilitate through the single window the formalities and procedures relating to free access to service activities and their exercise so that the professionals can carry out all the necessary formalities electronically and remotely and know the processing status of the procedures in which you have the status of interested party. information useful for the best defense of the rights of consumers and users must also be provided through the single window.

2. In any case, professional associations must guarantee access through a single window to the following information:

a) Access to the register of members, which must be up-to-date, containing the following information: first and last names of registered professionals, membership number, official titles, professional address. (...)"

Therefore, the specific regulations governing professional associations determine the minimum information of registered professionals that is considered useful for consumers and users and that must be the subject of active advertising. It should be noted that among the information that must be made public is that of the professional qualification situation in the sense of whether the professional is practicing or not. However, this information does not include information about the reason for leaving school, nor the dates of enrollment and withdrawal.

The fact that the reason for the dismissal from the association is made public has a significant impact on the privacy of the professional who has been dismissed. This impact on privacy is not justified by a superior interest of the person claiming who does not base this access on a specific purpose, beyond knowing whether the lawyer is registered or not at that time (information has already been provided to him by the school).

**Therefore, in this case, the right to data protection of the professionals referred to in the claim must prevail over the right of access to information.**

**v**

**With regard to the dates of registration and termination of membership, insofar as it is information that does not have a special significance for the privacy of the members and the fact that membership entails publicity of the exercise situation and certain professional data, which determines limited expectations of privacy with respect to this data, it does not seem that with respect to this information the right to data protection of lawyers referred to in the query on the right of access to this information.**

**In this sense, it should be borne in mind that, as we have seen, the regulatory regulations of professional associations already oblige them to make public through their website the register of members. This may allow you to obtain information about the date of incorporation and the date of termination (at least the approximate date). The purpose of publishing the register of members is to provide information to citizens about the people who are members at any given time. Active advertising makes it possible to offer this information regarding registered professionals at the time of making the query, but not regarding the historical dates of registration. In any case, a request such as the one analyzed would be aligned with the objective pursued by the law to publicize the association of professionals, offering the possibility to also meet professionals who have been so for some period of the past**

**On the other hand, from the point of view of the intrusion that this would entail for the professionals affected, this would be minimal taking into account the limited scope and nature of the data requested, the small number of people from whom it asks for the dates of registration and termination, and the fact that this would be information that could have been accessed at the time, during the period in which they were registered.**

## **Conclusions**

**From the point of view of data protection regulations, it is possible to provide information on the dates of registration and termination of enrollment, but access to information on the reasons for termination of enrollment should be denied. association of lawyers to which the claim refers**

**Barcelona, January 12, 2022**