PD 4/2021

Legal report in relation to the Draft order approving, modifying and repealing evaluation tables and document access

Background

A letter from the Commission is presented to the Catalan Data Protection Authority National Committee for Documentary Access, Evaluation and Selection (hereinafter, the Commission), in which the Authority is requested to issue a report on the Draft order by which evaluation tables are approved, modified and repealed and documentary access.

On May 18, 2021, the Commission sent this Authority a letter outlining the incorporation of a modification of a document access and evaluation table that is incorporated into the Project.

Having examined the project, which is not accompanied by any other documentation, taking into account the current applicable regulations, and in accordance with the report of the Legal Counsel, the following report is issued.

Legal foundations

I

(...)

II

The document evaluation and access tables (TAAD) incorporate, in accordance with the provisions of article 9 of Law 10/2001, of July 13, on archives and document management, the evaluation and the deadline conservation of each documentary series.

According to article 9, cited, once the active and semi-active phases have been concluded, the evaluation regulations must be applied to all public documents, and conservation must be determined, due to their cultural, informational or legal value or, where appropriate, its removal.

From the perspective of the right to the protection of personal data, it is necessary to take into account 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 processing of personal data (RGPD).

According to article 5.1 of the RGPD, personal data must be:

> **"a) treated in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency"); b) collected for specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, paragraph 1, the further processing of personal data for archiving purposes in the public interest, scientific and historical research purposes**

or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose"); c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("data minimization"); (...) e) maintained in a way that allows the identification of the interested parties for no longer than necessary for the purposes of the treatment of personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the measures appropriate technical and organizational techniques that this Regulation imposes in order to protect the rights and freedoms of the interested party ("limitation of the conservation period"); f) processed in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate organizational technical measures ("integrity and confidentiality »).

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According to article 89 of the RGPD:

"1. The treatment for archival purposes in the public interest, scientific or historical research purposes or statistical purposes will be subject to adequate guarantees, in accordance with this Regulation, for the rights and liberties of the interested parties. These guarantees will require that technical and organizational measures are available, in particular to guarantee respect for the principle of minimization of personal data. Such measures may include pseudonymization, provided that in that way said ends can be achieved As long as those goals can be achieved through further processing that does not allow or no longer allows the identification of the interested parties, those goals will be achieved in that way."

It is also necessary to take into account the provisions of Organic Law 3/2018, of December 5, on Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD).

Specifically, according to article 26 of the LOPDGDD:

"It will be lawful for the Public Administrations to process data for the purpose of archiving in the public interest, which will be subject to the provisions of Regulation (EU) 2016/679 and this organic law with the specialties that derive from the provisions of Law 16/1985, of June 25, of Spanish Historical Heritage, in Royal Decree 1708/2011, of November 18, which establishes the Spanish Archives System and regulates the Archives System of the General Administration of the State and its Public Bodies and its access regime, as well as the autonomous legislation that results from application."

In short, the conservation and access to documentation containing personal data constitutes data processing (Article 4.2 RGPD), which must be subject to the principles and guarantees of data protection regulations, among others, the principles of purpose, limitation of the retention period, minimization and confidentiality (art. 5.1 RGPD).

Annex 1 of the Draft Order (unlike Annex 2, relating to modified tables), does not include the code numbers that correspond to each table that is created. Therefore, we will refer to the file number. In any case, we acknowledge that some of the forecasts included in the TAADs that we refer to in this report are repeated in identical terms in several TAADs, so that the mention of the file number in each case is not exhaustive and does not necessarily include all TAADs that include a certain mention.

III

From the perspective of the protection of personal data, it is necessary to know the specific information treated in each table, to determine, among others, the possible compatibility of the initial treatment with a subsequent treatment for archiving purposes (art. 5.1. b) RGPD).

Likewise, as can be seen from the provisions of article 89 of the RGPD, a subsequent treatment - and detached from the initial purpose of the treatment - for archival purposes, requires the application of adequate guarantees in protection of the rights of affected, which make this subsequent treatment compatible. It is based on the information contained in each table, that it can be determined whether the guarantees that have been established are adequate, and whether the measures provided protect the confidentialit

The processed information also determines the proportionality of the subsequent treatment for archival purposes and the retention period that may be considered appropriate in each case (even, where appropriate, permanent retention).

It should be noted that, at the time of issuing this report, the Project Report is not available in order to analyze the appropriateness of the cultural, historical, legal or other reasons that may justify the preservation of the information in each case (art. 9 Law 10/2001).

The Project refers, in a large part of the TAAD, to the fact that the documentation may contain personal data, using formulas similar to the following: "Mostly (or occasionally) they may contain personal data that are not even merely identifying related to the organization, operation or public activity of the Administration or of special categories" (for example, Exp. 40/2019 and 44/2020, 49/2019, 42/2019, 6/2020, or 66/2020, among others). In other cases the formula is also used: "Occasionally it may contain personal data that are not of special categories" (Exp. 41/2019, or 46/2019, among others).

Nor does the following formula (Exp. 37/2020, code 921) clarify the types of data processed: "they may contain merely identifying personal data (...); and also other personal data, and mostly may contain other personal data that are not of special categories."

As this Authority has already done on previous occasions (Reports PD 15/2015, PD 6/2017, PD 3/2018, or PD 6/2019), although specifying which categories of data are not treated in each table would already give certain information (especially when it is ruled out that the information may contain data of special categories, in the terms of article 9 of the RGPD), it would be convenient, as far as possible, to specify which categories are the ones that are treated .

As has been pointed out on previous occasions, this would make it possible to specify not only the conservation of the information, and to consider its belonging (above all, but not o

in those cases in which the permanent conservation of information of special categories is foreseen), but also the access regime in each case - to which we will refer later -, as well as other issues related to compliance with the principles of article 5.1 of the RGPD, among others, what could be the appropriate guarantees that the regulations require for the processing of data for archival purposes.

We note that in a large part of the TAAD of the Project (for example: Exp. 7/2020, code 813; 36/2018; 27/2019; or 48/2019, etc...), reference is made to that the table contains personal data "merely identifying information related to the organization, operation or public activity of the Administration (...)".

Regarding this, as this Authority has also agreed, without prejudice to the fact that the mention of "merely identifying" data may respond to the provision of article 24.1 of Law 19/2014, of December 29, on transparency, access to the public information and good governance (LTC) and, where applicable, of article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information, from the perspective of protection of data, the processing of identifying data or any other type of data (economic-financial data, professional or academic profile data, health data, etc.), is not harmless, in the sense that a disproportionate treatment (for example, the conservation of data for an excessive period of time or without sufficient guarantees), may result in damage to the rights and interests of the affected person, whatever the category or typology of the data processed, even if the documentation in question contains exclusively identifying data is. It should be borne in mind that from the perspective of data protection, even if it is foreseen that only identifying data will be processed, taking into account the matter discussed in each table, it will in fact involve the processing of other personal information linked to the actions that the persons holding the identifying data have done, or suffered. This information goes beyo

In other cases, in some TAAD there is no reference to the processing of identifying data, when from the information available it seems that such data would be processed. As an example, Exp. 36/2019, code 282, of the series "affiliation, registrations, cancellations of data variations of Social Security workers", which only indicates the processing of data of special categories. Although it is indicated that these data are "mostly" processed, it must be stressed that this does not allow us to deduce whether other categories of data are processed a

Also in line with these considerations, we note that in a large part of the tables, it is indicated that the data can be found "occasionally" in some cases, or "mostly" in others. It should be noted that in some cases, these mentions would not provide very clarifying information either. Thus, in the Exp. 77/2020, of the series "Subsidies for the implementation of guidance services, accompaniment and support for the insertion of people with disabilities or mental health disorders", it is indicated that "Occasionally it may contain personal data of special categories of the art. 9.1" of the RGPD. From the information available, it does not appear that the processing of data categories of art. 9.1 GDPR (in particular, health data) in this table, be only occasional.

Apart from the special categories of data (art. 9.1 RGPD) and identifying data, there is a wide range of data categories (economic and financial data, data on personal characteristics, social circumstances, academic and professional data, employment...) which, if contained in the TAAD documentation, may condition its treatment for archival purposes (technical or organizational measures to be applied, retention period, access...). The assessment of this treatment, from the perspective of the

data protection principles, would require knowing which categories of data are effectively processed in each case, and not just knowing whether identifying data or special categories of data are processed.

Also indicate that, in some tables, it is mentioned that the table "contains data on limited or restricted subjects of minors" (for example, Exp. 78/2019), while in others it is foreseen that "contains data on limited or restricted subjects that could harm minors." (Exp. 5/2020). At the outset, the second expression does not allow determining whether the information is "from the minor" owner, as in the first table mentioned, or if it can also be from third parties. In any case, we insist that specifying the types of information processed would help not only to clarify this issue (who are the affected people) but also to determine whether the retention periods are adequate.

The Exp. 4/2020, of the series "Subsidies to finance the recruitment of staff to attend to students with special educational needs (...)", provides that "occasionally it may contain personal data relating to minors." The data of minors, like the data of other groups, does not in itself constitute a special category for the purposes of data protection regulations, but from the context of the file, it seems that they could be treated health data of minors. If so, the "Motivation" section should be reviewed. Again, to insist that it would be appropriate to specify which categories of data are treated, moreover, taking into account that the permanent conservation of certain information is foreseen.

For all this, it must be concluded that the information available does not allow us to know with clarity and precision which categories of personal data are being treated, a question that is key, from the perspective of data protection, for the purposes of the principles of the regulations of data protection (art. 5.1 RGPD).

On the other hand, it should be borne in mind that article 89 of the RGPD establishes pseudonymization (art. 4.5 RGPD) as one of the guarantees to be taken into account when processing data for public archive purposes.

The RGPD configures pseudonymization as an adequate guarantee for data protection (art. 6.4.e), 25.1, and 32.1.a) RGPD, among others), without excluding from the scope of the protection regulations of data the pseudonymized personal information (consideration 26 RGPD). Therefore, whenever the purpose of archiving in the public interest can be achieved through pseudonymisation, or anonymisation, this measure wi

Having said that, it should be borne in mind that the retention period of the information does not necessarily have to be the same for all the documents that make up the same documentary series. The principle of minimization (art. 5.1.c) RGPD), which is expressly referred to in article 89 of the RGPD, should lead to the retention of only those parts of the documentary series in respect of which their retention is justified.

We note that the TAAD: Exp. 64/2020, from the "threatened flora catalog" series, i Ex. 66/2020, from the series "Files for the cataloging (...) of flora in danger of extinction", do not include the sections "Motivation" -which details the information discussed in each case-, and "Fundamental Legal". In both cases, the available information does not make it possible to know the personal data contained therein, nor can the pertinence of the forecasts on the permanent conservation provided for be assessed.

Finally, on a formal level, we note that there is some discrepancy between some of the expressions used by the project. Thus, the Draft Order mostly uses, when appropriate, the mention of the "total elimination" of the documentation, while in other

files (Exp. 36/2020, code 564, and Exp. 5/2020) uses the expression "total destruction". Aside from the desirability of a possible unification of the denomination, point out that in accordance with article 32 of the LOPDGDD, the deletion of personal data must result in blocking, as long as the eventual responsibilities have not been prescribed derived from the treatment. Once this period has elapsed, they must be securely destroyed.

IV

More detailed reference will be made below to the forecasts relating to the retention period of certain TAAD of the Project, without prejudice to the general considerations that have already been made.

1) In different TAADs of the Project, the permanent conservation of documentation is foreseen which, due to the information available, may include special categories of data. As an example, in Exp. 34/2018, of the series "registers of bodies representing staff in the service of public administrations", without adding any details regarding the category of data. In this case, although it is not specified, it seems that it would be data relating to union membership. On the other hand, in L'Exp. 35/2018, of the series "union representation bodies of staff in the service of public administrations", it seems that in addition to data on union membership, it should not be ruled out that there may also be other special categories of data (infractions administrative, health, etc.), nor other categories of data other than merely identifying ones, which would justify their conservation only for 4 years. In any case, in line with what has been pointed out, this type of mention does not allow determining which categories of data the documentation includes, nor can it be assessed whether permanent conservation is appropriate, for the purposes of the aforementioned data protection principles.

The Exp. 35/2018, of the series "union representative bodies of staff in the service of public administrations", provides that "If the public administration keeps the register of representative bodies", the retention period will be 4 years. Otherwise, permanent conservation is foreseen. The permanent conservation of all these other types of special categories of data (beyond the trade union affiliation of the members of the bodies, regardless of whether or not there is a register of representative bodies) does not seem justified.

The Exp. 14/2020, from the series "registration files in the registry of zoological centers", provides for the permanent conservation of information. Now, taking into account that annex 1 of the Project also includes the Exp. 13/2020, of the "Register of zoological centers" series, it does not appear that the permanent conservation of the registration file in this register was necessary. In this sense, it seems that the total elimination of the registration information in an appropriate period could be considered, since the registration is for permanent conservation, as is done, among others, in the Exp. 16/2020, in relation to the Exp. 15/2020.

2) The Exp. 27/2019, of the "management of requests for access to public information" series, provides for the total elimination within 10 years from the closing of the file, as long as and when there is an information system that contains summary data." . Once the decision on the access to public information file has become final, it does not seem justified to keep the file in a way that allows identification

the applicant, or the affected persons. On the other hand, it must be taken into account that in many cases the period of conservation to which access has been requested will be less than 10 years, so it would result that the file of access would unnecessarily extend the period of conservation of the information from the original file.

For this reason, provision should only be made for their preservation in an anonymized manner (either individually or aggregated).

In relation to this file, we note that Exp. 28/2019, of the "management of claims for access to public information" series, provides for the permanent conservation of the resolution and the total elimination of the rest of the documentation in 15 years from the closure of the file. Given the clear interrelationship with the Exp. 27/2019, it would be possible to apply a regime equivalent to that which has been set out.

Regarding the Exp. 1/2020, of the "subsidies in private centers for the service of monitors (...)" series, the permanent conservation of a series of documentation (reports of the evaluation commission, economic reports, etc...) is foreseen , and the elimination in 6 years of "the rest of the documentation". Again, the information available regarding the categories of data processed does not allow us to assess whether the permanent preservation of documentation is necessary regarding all the documents provided for in the file, beyond what can be deduced from its context. For example, taking into account that the elimination is linked to the date of submission of the annual accounts to the external control body, it is not clear why the "financial reports" should be kept permanently, nor what would be the rest of the documentation to be eliminated

We make the same consideration regarding Exp. 4/2020, from the series "Subsidies to finance the hiring of staff to attend to students with special educational needs (...)", regarding the Exp. 5/2020, of the series "Subsidies intended for the schooling of children from zero to three years old (...)", and regarding the Exp. 6/2020, from the series "Subsidies for the additional financing of private centers in environments with disadvantaged socio-economic characteristics".

3) The Exp. 40/2019 and 44/2020, of the series "declarations on incompatibilities and patrimonial assets of senior officials in the service of the Catalan public administrations", provide for the total elimination of the information in 15 years from the loss of the high office condition. The information available in the Exp. does not specify the categories of data processed, although given the regulatory provisions it is foreseeable that not only identifying or special category data will be processed, but also economic-financial, labor, professional training data, etc.

We note that, according to article 7 of Law 13/2005, of 27 December, on the regime of incompatibilities of high-ranking officials in the service of the Generalitat: "High-ranking officials in the service of the Generalitat, (...) , during the two years following the termination of the position for which they have been appointed, elected or appointed, they cannot carry out private activities related to the files in the resolution of which they have directly intervened (...)." According to article 19.2 of the same Law: "High-ranking officials dismissed for having committed a serious offense typified by this law cannot be appointed to occupy any high-ranking position for a period of up to four years.(...) ", and according to article 22: "Serious infringements expire after two years and minor ones after six months. Serious sanctions expire after two years and minor ones after one year."

Taking into account this, and the deadlines for the requirement of political responsibilities, from the perspective of the principle of limitation of the conservation period (art. 5 RGPD), a term of 15 years may be excessive.

We extend these considerations regarding the Exp. 41/2019, of the series "Register of activities of senior officials in the service of the Catalan public administrations", and in the Exp. 42/2019, of the series "Register of Patrimonial Assets and Interests of senior officials in the service of the Catalan public administrations" given that it is planned to be kept permanently.

4) The Exp. 45/2019, of the "Register of Non-Governmental Organizations (...)" series, provides for the permanent conservation of the processed information. The Exp. 46/2019, from the series "files of the Register of Non-Governmental Organizations (...)", also provides for permanent conservation. However, given that the NGO Register will already keep the information permanently, it does not seem that once the NGO has been registered in said register, the files must also be kept permanently, in line with other examples of Similar TAADs, such as those relating to the Registry of Accredited Companies in Catalonia (Exp. 29 and 30 of 2019), in which the elimination of the registration file is foreseen in five years from the cancellation of the registration in the corresponding register.

5) The Exp. 50/2020, of the series "files on the application of the employment reserve quota in favor of people with disabilities in companies", provides for the total elimination within four years, but does not indicate when it begins the computation for the deletion of the data. Regardless of whether the period indicated is adequate, it would be useful to clarify when the calculation of this period begins.

In the Exp. 45/2020, of the "granting of the parking card for people with disabilities and reduced mobility" series, it is also not indicated when the calculation of the 5-year term for the total deletion of the data begins.

We extend this consideration to Exp. 46/2020, of the series "granting the special transport card for people with disabilities and reduced mobility".

In addition, in both cases (Exp. 45 and 46, of 2020), it is only indicated that special categories of data are processed, without including identifying data. If, as seems predictable, identifying data is also processed, it would be appropriate to mention it. Likewise in other TAAD in which this circumstance can occur.

In the Exp. 52/2018 and 17/2019, code 12, of the "hourly control of Public Administration personnel" series; the Exp. 52/2020, code 34, of the series "documents for managing daily services for public security bodies and forces"; the Exp. 33/2019, code 454, of the series "reports of occupational accidents"; the Exp. 34/2019, code 455, of the series "occupational accident and occupational disease files"; or the Exp. 57/2019, code 801, of the "work inspection files" series (all of Annex 2), the start of the calculation of the corresponding terms in which the total elimination of the information

The Exp. 66/2019, code 84, of the series "selection files for occupational programs", the total elimination is foreseen in 15 years, but without indicating when the calculation begins. In any case, note that if the calculation starts from the resolution of the selection in question, taking into account the sensitivity of the information th

can be contained in this type of file, it does not seem that a period of 15 years is justified, from the perspective of the principle of limitation of the conservation period, taking into account the temporal limitation of the possibility of appealing or contesting the process of selection

6) The Exp. 50/2019, of the series "management of communications of public events and mobilizations", of the competent department in matters of public security, provides for the permanent conservation of information which, according to the available information, contains data of special categories (art. 9.1 GDPR). Insofar as it concerns only data relating to the person representing the organization promoting the event or who may have presented the communication of the performance of the event, it does not seem that permanent conservation is justified, which would only be justified with regard to the data of the entity or natural person prom

In the event that the reference to the special categories of data refers to information collected by police forces, in relation to public events or citizen mobilizations, if we adhere to the provisions of Organic Law 4/2015, of March 30, of the protection of public safety (LOPSC), in relation to the development of meetings and demonstrations (art. 23), and the sanctioning regime (arts. 30 et seq.), "The administrative offenses typified in this Law will be prescribed in six months , in the year or two years after it was committed, depending on whether it is minor, serious or very serious, respectively." (art. 38.1 LOPSC). According to article 40.1 of the same law: "The sanctions imposed for very serious infractions will prescribe three years, those imposed for serious infractions, two years, and those imposed for minor infractions a year, calculated from the following day to the one in which the resolution by which the sanction is imposed is acquired administratively. With respect to these types of data, it would be necessary to be within the limitation periods, for the purposes of the conservation of the information.

7) The Exp. 51/2019, of the series "prior proceedings of files in sanctioning matters", contains "data relating to infringements and administrative sanctions", among others, and foresees the total elimination of preliminary proceedings that do not result in a sanction , within 4 years. Without prejudice to the relevance of this period, it would be convenient to specify the beginning of the calculation, and the retention period could also be specified, if applicable, with respect to the information related to previous proceedings that result in a sanctioning procedure and in a sancti

8) The Project collects three files in relation to information related to exposure to asbestos (Exp. 53 of the series "Registry of companies with asbestos risk", 54 of the series "Work plans with risk of asbestos", and 55, from the series "Register of data on the evolution of exposure (...), all from 2020).

In the Exp. 54/2020, "total elimination and conservation of anonymized specimens" is foreseen, and a period of 40 years is indicated. It should be noted that the wording - and especially the reference to "specimens" - is not clear. It seems that in a period of 40 years it would proceed to complete elimination, except for anonymized information that would continue to be preserved. If this is the case, it should be clarified, and indicate that it is "permanent" conservation, if applicable. Nor is it indicated when the calculation of the indicated term would begin. In addition, it is expected that, aside from merely identifying data, other data that are not of special categories will occasionally be processed (without identifying the cate

We note that Royal Decree 396/2006, of March 31, which establishes the minimum health and safety provisions applicable to workers at risk of exposure to asbestos, provides for the following: "Archivo de resultados y conservación of the samples. All the results of the analyzes must be kept for a minimum period of 40 years, as well as all the permanent preparations corresponding to the samples analyzed for a minimum of 10 years in order to be able to carry out the checks that were relevant" (annex II, point 8.3 .4).

It seems that the term indicated in this case could refer to this regulatory provision. If this were the case, and regardless of the fact that in the end only anonymized information was kept, it should be noted that the data of medical analysis results that, if applicable, have been made to affected workers, in case they have to be treated, they would be health data (art. 4.15 RGPD), and it would therefore be necessary to indicate that special categories of data are being treated.

Otherwise, if the processing of health data is not planned, given the information available, it could not be determined that the planned period of 40 years is necessary.

Regarding the Exp. 55/2020, cited, the same doubts are raised, given the impreciseness of the information available on the information treated.

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The TAAD of the Order Project include the access regime that is considered applicable in each case.

According to article 34.1 of Law 10/2001:

> **"1. People have the right to access public documents under the terms and conditions established by Law 19/2014, of December 29, on transparency, access to public information and good governance, and the rest of the regulations that are applicable. "**

As this Authority has agreed on previous occasions, the provision for access made in the Draft order for each TAAD is a guideline, given that in accordance with the regime established in state and Catalan transparency legislation , access to public information and good governance (Law 19/2013, of December 9 (LT), and Law 19/2014, of December 29 (LTC), respectively), the possibility of giving access or not to a document it will not depend on the way it is collected in this section of each TAAD, but on the existence of any applicable limit of those provided for by the transparency legislation, mentioned, or by other rules with the rank of law.

Article 5.1.a) RGPD establishes that all processing of personal data (art. 4.2 RGPD) must be lawful, loyal and transparent in relation to the interested party. In order for the treatment, in particular, the access by third parties to the personal data contained in the documentation referred to in the TAAD, to be lawful, one of the conditions provided for in article 6 RGPD must be met and also , if applicable, Article 9 RGPD, in the case of special categories of personal data.

In any case, it must be reiterated that the TAADs contain initial guidance which, without prejudice to the fact that the resolution of specific access requests requires analyzing the concurrent circumstances in each case, offers initial information on the applicable regime.

Having said that, it is necessary to refer to some issues that affect some of the TAADs included in the Draft Order.

1. In the Exp. 53/2019, code 195, of the series "Tax register on vehicles with mechanical traction, the following formula is used: "free access unless there is a limit that must prevail, partial access."

As has been done on previous occasions, in accordance with the regime established in the transparency legislation (LT and LTC), which is based on the existence of a general rule, such as access to all information public, and of some limits that may lead to a limitation of access, the consequence of the concurrence of some limit must not always and necessarily be partial access, but could also be the total denial of access , in those cases where partial access does not allow safeguarding the limit that must prevail.

For this reason, this Authority has considered an expression similar to "free access unless there is a limit that must prevail" more in line with the transparency regulations, since this formula does not presuppose whether the limit will lead to partial access or the denial of the access

We agree that, for the most part, this formula has been incorporated in relation to the different TAADs that are the subject of the Project examined, a matter that is positively assessed.

In any case, the formula used in Exp could be revised. 53/2019, quoted.

2. We agree that the information in the access regime section of the Exp. does not seem too clarifying. 51/2019, of the series "prior proceedings of files in sanctioning matters", which provides: "restricted access in the case of files in which the interested parties are natural persons and free access with restrictions in the case of legal persons." From the perspective of data protection, it should be noted that in the files sanctioning legal entities there may probably be data of natural persons, in respect of which restricted access may also be relevant.

Having said that, in different TAAD of the Project (as an example and among others, Exp. 65/2019, 38/2020, 78/2019, 79/2019, 5/2020, or 45/2020), in which the treatment of information of special categories is foreseen, the formula "restricted access, without prejudice to partial access" is used, which seems to refer to the guidelines that article 25 of the LTC provides for the partial access to public information and docu

On this, we reiterate the consideration made in the sense that the resolution of specific access requests will require analyzing the concurrent circumstances in each case, to determine access to information.

3. Still in relation to the access regime provided for in the transparency legislation, we note that in several TAAD of the Project (among many others, Exp. 36/2018), mention is made of: "Validity of the restriction: (...) for specially protected data, this exclusion ceases to have effect 25 years after the death of the person concerned and, if the date is unknown, 50 years after the production of the document. For the rest of the personal data, this exclusion ceases to have effect 30 years after the production of the document". In the Exp. 38/2021, it is simply provided that "this exclusion ceases to have effect 30 years after the production of the document."

In other cases, such as Exp. 38/2020, of the "Authorization to travel abroad (...)" series, although there are "data on limited or restricted subjects that could harm minors", only the deadline is mentioned of 30 years, and not in terms of 25/50 years, which would be relevant if special categories of data are treated.

In any case, the temporary restrictions on access, foreseen in the Project, respond to the provision of article 36.1 of Law 10/2001, according to which:

> **"1. In a general way, the legally established exclusions regarding the consultation of public documents cease to have effect thirty years after the production of the document, unless specific legislation provides otherwise.**
> **If these are documents that contain personal data that may affect the security, honor, privacy or image of people, as a general rule, and unless specific legislation provides otherwise, they may be subject to public consultation with the consent of those affected or when twenty-five years have passed since their death or, if the date is not known, fifty years since the production of the document."**

As has been mentioned on previous occasions, it should be taken into account that article 22.2 of the LTC provides that:

> **"2. The limits of the right of access to public information are temporary if so established by the law that regulates them, and they remain as long as the reasons that justify their application last.**

Thus, we remind you that, in accordance with the transparency legislation, the limits are only temporary "if so established by the law that regulates them."

Having said that, in TAAD like that of the Exp. 35/2019, of the "personnel template" series, which only contains identifying data related to the organization, operation or public activity of the Administration, it does not seem necessary to remember the lifting of the exclusion at 30 years old, precisely because according to article 24.1 of the LTC it can no longer be considered that access is excluded before this term.

In other cases, such as, for example, Exp. 38/2020, quoted, the total elimination is foreseen in 3 months from the end of the validity of the document. However, the same table foresees that the exclusion of access "is without effect 30 years after the production of the document". This forecast does not seem consistent with the predicted destruction forecast in the same table.

For all this the following are done,

Conclusions

Having examined the draft order approving, modifying and repealing evaluation tables and document access, it is considered adequate to the provisions established in the regulations on personal data protection, as long as the considerations are taken into account made in this report.

Barcelona, June 9, 2021