

IAI 1/2022

**Report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against a city council for denying a councilwoman access to the list of travel expenses and per diems presented to the City Council by the mayor, with the tickets and supporting documents.**

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 filed against a city council for denying a councilwoman access to the list of travel and subsistence expenses presented to the City Council by the mayor, with the tickets and supporting documents.

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 Adviser, I report the following:

**Background**

1. On September 20, 2021, a councilor requests from the City Council access to the tickets, specific receipts and detailed concept of the relationship of travel expenses and per diems presented by the mayor since 2015. As stated in at his request, the city council would have provided him with the global amounts for concepts corresponding to each year.
2. On November 13, 2021, the councilor files a claim before the GAIP against the City Council for the lack of response to her request for access and requests access to "Detailed concept of the relationship of travel expenses and allowances presented to the City Council (...) by its mayor (...) with the tickets and specific proofs".
3. On October 27, 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. This report is not among the documentation sent by the GAIP.
4. On January 12, 2022, GAIP addresses the request for a report to this Authority in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance.

**Legal Foundations**

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 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 movement of such data and which repeals Directive 95 /46/CE (General Data Protection Regulation, hereafter RGPD).

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

Article 4.2) of the RGPD considers as treatment "any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction."

The RGPD provides that all processing of personal data must be lawful (article 5.1.a)) and, in this sense, establishes a system of legitimization of data processing that is based on

the need for one of the legal bases established in article 6.1 to apply. In Specifically, section c) provides 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".

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.c) has to be established by the Law of the European Union or by the law of the Member States that applies to responsible for the treatment.

The referral to the legitimate basis established in accordance with the internal law of the Member States concerned reference this article requires that the rule of development, when dealing with protection of personal data of a fundamental right, has the status of law (Article 53 CE), as it has come to recognize article 8 of Organic Law 3/2018, of December 5, on data protection personal data and guarantee of digital rights (hereinafter, LOPDGDD).

For its part, 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 , organism or entity in accordance with the Law of the Union or 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."

From all this it follows that the councilor's access to the personal data that may contain the information requested on the basis of the fulfillment of a legal obligation by the City Council (responsible for the treatment (art. 6.1 .c) RGPD), must necessarily be covered by a rule with the status of law.

According to article 18 of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) "people have the right to access public information , referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal entity" (paragraph 1). The information referred to in the query is public information for the purposes of article 2.b) of the LTC, and therefore remains subject to the right of access in the terms provided by the transparency legislation.

Now, the second section of the first additional provision of the LTC provides that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law."

In this case, the person requesting access has the status of councilor of the corporation and, therefore, the assessment that can be made regarding the obligation to provide personal information of third parties or not must be examined taking into account the right of access that the local regime regulations attribute to councilors - that is, Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) and the revised text of the Law municipal and local regime of Catalonia, approved by Legislative Decree 2/2003, of April 28 (TRLMRLC) - regarding that information of which provided by the City Council that is necessary for the fulfillment of its functions.

This without prejudice to the fact that the councilor who requests information must be granted at least the same guarantees regarding access to information as the rest of the citizens

who do not have this condition of elected office, given the supplementary application of the LTC (additional provision first section 2).

### III

As this Authority has decided on previous occasions (among others, reports IAI 48/2019, IAI 52/2019, IAI 3/2020, IAI 41/2020, IAI 27/2021, IAI 36/ 2021 or IAI 43/ 2021 which can be consulted on the website <http://apdcat.gencat.cat>), the local regime legislation recognizes a right of access to all elected officials, regardless of whether they are in the government team or in the opposition, to the information that their local corporation has and that may be necessary for the exercise of the functions that correspond to them.

Thus, article 77.1 of the LRBRL establishes that "all members of local corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the services of the Corporation and result

necessary for the development of its function".

In the same sense, the TRLMRLC pronounces itself, by providing, in its article 164.1, that "all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions, in accordance with repeated jurisprudence on this issue (for all STS 27 of September 2002 and of June 15, 2009), is part of the fundamental right to political participation enshrined in article 23.1 of the Spanish Constitution, according to which "citizens have the right to participate in public affairs, directly or through representatives, freely elected in periodic elections by universal suffrage."

It should be borne in mind that elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis and study of the necessary background information that the City Council services have, for their control work and to document themselves for the purposes of adopting decisions in the future (among others, STS of March 29, 2006) . In relation to this, the STS of June 27, 1998 already stated that "[...] *To be able to carry out this supervisory and controlling function, it is necessary to know beforehand the data and background that are needed for this purpose, which implies the need to have access to all the data, antecedents and information [...] to then select those that can be useful in the fulfillment of the function entrusted to the councilors [...]*".

However, the exercise of this right of access to municipal information is in any case subject to certain conditions provided for in the TRLMRLC, without prejudice to what may be established by the organization and operation regulations of each local body or, in its defect, in the

Regulation of organization, operation and legal regime of local entities (ROF), approved by Royal Decree 2568/1986, of 28 November.

It is therefore necessary to analyze the forecasts of the aforementioned regulations in order to assess whether the local regulations, or alternatively the transparency legislation, would enable the access claimed by the councilor in the present case.

#### IV

Article 164.2 of the TRLMRLC establishes in which cases the corporation's services must provide information directly to the elected members. Thus, this article provides:

- "2. Corporation services must provide information directly to members of corporations when:
- a) Exercise delegated functions and the information refers to their own affairs responsibility
  - b) These are matters included in the agenda of the sessions of the collegiate bodies of which they are members.
  - c) It is about access to information or documentation of the local corporation that is freely accessible to citizens."

In the case at hand, the purpose of the councilor's request is to access the information on travel expenses and per diems presented to the City Council by its mayor with specific tickets and supporting documents. With regard to this type of information, which does not correspond to direct access matters (unless we were at the time of the approval of the accounts by the full body of the corporation), it will be necessary to take into account what is established in article 164.3 TRLMRLC, as well as the procedure applicable to these requests for access provided for in article 14 of the ROF.

Article 164.3 TRLMRLC, establishes.

"3. In the other cases, the request for information is understood as accepted by administrative silence if a negative resolution is not issued within four days from the date of presentation of the request. In any case, the negative resolution must be motivated, and can only be based on the following assumptions:

- a) When the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's image.
- b) When it comes to matters affected by the general legislation on official secrets or for summary secrecy."

In accordance with this regulation, requests for access to information held by the corporation's services made by councilors must be subject to an authorization procedure by the president or the Board of Governors. These requests may be denied when any of the circumstances provided for in articles 164.3 of the TRLMRLC occur, but they could also be denied, given the nature of the right to data protection (STC 292/2000), when

there are other specific circumstances related to personal data that justify it, in particular by virtue of the principle of data minimization, according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for that are treated" (Article 5.1.c) RGPD)).

This principle implies, on the one hand, that access to the municipal information it includes certain personal data, without the consent of those affected, must be linked necessarily to the exercise of the functions that correspond in each case to the councilor who them treatment, in the terms provided for in the local regime legislation (they are part of the government team or no).

Thus, the processing of personal data that may be carried out by councilors who do not have assigned government responsibilities, as it seems would happen in the present case, would find its justification, from the perspective of data protection, in the exercise of the functions attributed to them as members of collegiate bodies of the local entity itself and, in particular, in the functions of control and supervision of municipal action, such as the formulation of questions, interpellations, motions or even the motion of censure, which the local regime regulations attribute to them.

On the other hand, the principle of minimization requires that a weighting exercise be carried out, in order to assess the implications that, in each case, the exercise of the right of access to the information of the councilors may have for the rights of the people affected, taking into account, for that purpose, the circumstances of the specific case, the personal data contained in the information requested, the intended purpose and the terms in which the request is made or the possible subjects affected, among other aspects.

The aim of this weighting is to prevent excessive or irrelevant personal data from being communicated to the councilors to achieve the intended purpose of the access, which must necessarily be linked to the performance of the functions of the councilors who request the information.

In the case at hand, the councilor is requesting information on travel and per diem expenses presented to the City Council by its mayor with specific tickets and supporting documents since 2015.

Articles 166 of the TRLRMC, 75 of the LRBRL and 13 of the ROF regulate the financial compensation that corresponds to local elected officials for the exercise of their positions. Article 75 LRBRL distinguishes between: remuneration (of a salary nature) that is received for exclusive or partial dedication (sections 1 and 2); the assistances or remunerations that are perceived for the effective participation in the municipal collegiate bodies and that are appropriate only for the case of elected officials who do not have exclusive or partial dedication (section 3) and, the indemnities or compensations for the actual expenses incurred in the exercise of their position (section 4), expenses that must have prior documentary justification according to the rules of general application of public administrations and those approved by the Corporation's Plenary.

For the purposes of the transparency regulations, article 25.1, letters b) and c) of Decree 8/2021, of February 9, on transparency and the right of access to public information, defines what must means per diems and allowances, in the following terms:

"(...)

b) Allowances: amounts that are credited daily as financial compensation to meet the costs of maintenance and accommodation that may arise from service tasks and attendance at courses outside the locality of the usual place of work.

c) Indemnities: other amounts that may be received due to the provision of services to the public administration. It includes, among others, compensation for travel expenses, for the use of any means of transport due to the provision of services, compensation for a forced transfer of residence from the usual place of work with a change of location, assistance rights for participation in personnel selection tribunals or in the practice of aptitude tests, for collaboration in courses and activities for training and improvement of personnel organized by the public administration and for competition in meetings of its collegiate bodies or boards of directors of its public sector entities, as well as compensation due to termination of employment.

(...)

Therefore, with respect to the information claimed, regarding the diets, it can be foreseen that it refers to the information on the training activity, the service commission, the event or the meeting that gives rise to it, with specification of the concept of the expense (accommodation and/or meals) and the information contained in the invoices or vouchers corresponding to the expenses incurred.

With regard to the travel expenses referred to in the claim, it can be foreseen that the justification will also include information on the reason for the travel, with specification of the concept of the expense (mileage, documents or transport tickets) and also include the corresponding invoices or tickets.

In this case, in the weighting of rights that must be carried out to determine the councilor's right of access, it must be taken into account, first of all, that in budgetary matters, it is up to the Plenary of the corporation, made up of all the councilors, to approve of the corporation's accounts in accordance with the provisions of article 22.2.e) of the LRBRL (and in similar terms, article 52.2.f) of the TRLMLC) and local treasury legislation (art. 212 of Royal Legislative Decree 2/2004, of March 5, approving the revised text of the Local Treasury Regulatory Law).

From the point of view of the right to information of members of local corporations, and in particular from what is provided for in article 98.b) and 164.2 of the TRLMRLC, it must be remembered that local corporations must directly provide information to their members when, among others, this refers to matters of their own responsibility or when it concerns matters included in the agenda of the sessions of the collegiate bodies of which they are members. In this case, the information must be available to the councilors in the corporation's secretariat before the dispatch of the call.

For the purposes we are concerned with, the requested information would form part of the documentation that must be made available to councilors for the corresponding budget approval.

Likewise, another element to be taken into consideration in favor of the right of access is that, in matters of economic, accounting, budgetary and patrimonial management, article 11.1.b) LTC obliges the

administrations to publish on the transparency portal the "remunerations, compensations and per diems (...) of the senior positions of the Public Administration (...)" (in accordance with article 7 of Decree 8/2021, to these effects the effects positions of local corporations have the consideration of high positions). To the extent that this information must be public, it can also be known by the person making the claim. And, in this sense, it seems that the city council would have already provided the councilor in an aggregate form the global amounts that the mayor would have received in terms of per diems since 2015.

On the other hand, it must be remembered that in many cases these expenses are linked to the existence of minor contracts. In this regard, we cannot forget the duties of active publicity that the transparency regulations impose with respect to all contracts (art.13 LTC) and which allows access, among others, to the object, the amount, the contractor and the date of provision.

In addition, knowledge of the details of the expenses generated by the actions of the president of the corporation during all the budget years requested (the information is requested since 2015) may be necessary to evaluate and compare the expenses generated and, in short, to carry out an evaluation of the management of public resources which is part of the control and inspection functions of the governing bodies (art.22.1.a) LBRLR) and the withholding of accounts by them.

From the point of view of the degree of impact on the mayor's privacy that access to the justification of travel expenses and per diems received may entail, although it will depend on the degree of detail with which these appear specified, in in general it can be said that in principle this is information of an economic nature, linked to the work and professional activity of the elected office that would not affect his personal sphere and that, in principle, with the reservations that will be exposed, it would not affect special categories of data.

However, it must be taken into consideration that tickets for meals or accommodation that have been justified by the mayor may contain, in addition to the names of the restaurants, the date and the amounts paid, etc. other information such as, for example, the types of menus you have requested, which they would allow know and analyze their personal preferences or even establish certain aspects related to their health or beliefs or establish non-pertinent behavioral guidelines to achieve the intended purpose.

Therefore, although in accordance with what has already been stated above, there are sufficient elements that justify that access to the requested information should prevail, in accordance with the principle of minimization it would be necessary to eliminate from justifying the information on these aspects relating to habits, personal preferences or even health data or beliefs. Transparency must allow effective control of public resources, and this can be done without sacrificing these aspects of the private life of the affected person. It is therefore possible to hand over the supporting documents (invoices, tickets or other supporting documents) without including detailed information on the composition of the meals.

In the case of travel vouchers, in principle it also does not seem that there is a significant level of intrusion for the mayor who has made the trips, which should prevent him from providing the requested information. However, it cannot be ruled out that in some cases providing not only the date of the journey but also the exact hours may allow establishing a pattern of behavior that may end up affecting the safety of a person or that at least



may end up affecting the normal development of your work or your private life. In this case, it would be appropriate to provide information in a way that allows spending to be controlled (for example, indicating the weekly frequency of travel and the amount of each trip), without it being necessary to provide timetables or other details that could allow establishing patterns of behavior .

But in addition to the information that may affect the mayor himself, the justification of the allowances or travel may also include information from third parties that may be included in the invoices and receipts (issuers of the invoice), as well as the identification of third parties with which the mayor held a meeting or event that motivated the expenditure.

With regard to the issuers of the invoices, in accordance with the provisions of Royal Decree 1619/2012, of November 30, which approves the Regulations governing invoicing obligations (specifically articles 6 and 7 ), invoices in general will contain, at a minimum, the data corresponding to the invoice number, the date of issue, the name and surname, the company name or full name, both of the person obliged to issue the invoice and the recipient of the operations; the NIF; the address of the obligee and the addressee, among others. In the case of simplified invoices, they will include, among others, the NIF, the name and surname, as well as the company name or full name of the person obliged to issue it.

From the outset, the information relating to legal entities that may be included in the supporting invoices remains outside the scope of protection granted by the regulations on the protection of personal data (Article 4.1 RGPD). Consequently, there would be no impediment, from the perspective of data protection, for access to this type of information relating to legal entities.

With regard to the information of natural persons that may appear on the invoices, it should be remembered that in the field of public administration procurement, the information on the identity of the contractors, the object of the contract and the amount of the same , must be published, among other information on the transparency portal (art. 13 LTC) precisely as a measure of transparency in the use of public funds.

Therefore, it does not seem that access to this information by third parties that may contain the invoices should be limited.

Finally, with regard to the information of third parties with whom the mayor has met and who motivated the expenditure, each case will need to be analyzed in order to determine whether access to this information can be facilitated.

In the event that the travel or diet has been as a result of meetings held with other public officials of the administration, it is to be foreseen that these meetings take place within the framework of the exercise of powers or functions attributed to the Mayor and the other public position in question. The privacy expectations of people who hold public positions with regard to the work or professional activities they carry out are not comparable to those that other people who act in the private sphere may have. In this context, the right to data protection of the affected public officials should not prevent access

from the councilor to the information about them that may be included in the documentation justifying the allowance or transfer.

This same criterion would be applicable in the event that the meeting was with people considered as interest groups to the extent that the same transparency law expressly provides that information regarding those people considered as interest groups is accessible to citizens through the Register created for the purpose, and where all natural or legal persons, or other groups that the Law considers as such, must be registered, as well as all the activities of 'direct or indirect influence carried out by these interest groups. Given the provisions of the LTC regarding natural persons representing interest groups, it does not seem that there should be any impediment to identifying these natural persons as well.

Similar considerations can be made regarding the meetings with people with whom the mayor must have meetings linked to the provision of services or the acquisition of assets linked to the corporation's activity, even though when the other party that participates in the meeting is a legal person, it may be unnecessary to identify the specific natural person participating in the meeting, especially if the meeting is with some group or entity that may reveal some type of particularly sensitive information of the people involved.

With regard to access to information on natural persons acting in their own name in other cases (different to interest groups or persons related to goods and services that may be required by the City Council), for example due to its consideration of 'interested in an administrative procedure is an assumption that seems less likely (the probability that these meetings could have been held outside the municipal offices and could have generated this kind of expense is lower, but cannot be ruled out), provide information on who these people are and the reasons for the meeting, would imply an interference in the privacy of the participants that will affect to a greater or lesser degree depending on the matter in question.

In this sense, within the variety of specific matters or files, it cannot be ruled out that the information may even reveal data included in the special category of data of Article 9 RGPD (e.g. meeting held as part of a file of subsidies to disabled people) in a situation of vulnerability, or referred to the commission of administrative infractions because it is a disciplinary file. Given that the request for information does not specify specific reasons to justify the invasion of privacy that the councilor's access to the identity of all the people, probably residents of the municipality, who had gathered in the capacity of privately with the Mayor during this period, it would be necessary to provide information about this type of meeting in an anonymized manner.

## **Conclusions**

From the point of view of the data protection regulations, there should be no impediment to providing the councilor with the information requested on the tickets, specific supporting documents and detailed concept of the relationship of travel expenses and per diems presented by the mayor, omitting from these the information that allows to analyze or establish certain aspects related to your health, a

their personal preferences or establish non-pertinent behavioral guidelines to achieve the intended purpose.

In the event that the justification for the trip is to hold meetings with natural persons acting in their own name other than interest groups or persons related to goods and services that may be required by the City Council, it would be necessary to provide anonymized information regarding these third parties people

Barcelona, February 1, 2022

Machine Translated