IAI 2/2022

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against a professional association's refusal of the request for access to information relating to the association of a solicitor

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the refusal by a professional association of the request for access to information relating to the association of a solicitor.

Having analyzed the request, which is accompanied by a copy of the file of the claim submitted, in accordance with the report of the Legal Counsel, the following is reported:

Background

1. On November 7, 2021, a request for access to public information is presented to a professional association (henceforth, the association) in which the applicant states that he is dissatisfied with the action of his attorney and requests to know his association history.

2. On November 8, 2021, the association confirms to the applicant that the solicitor is registered, and informs that he can verify this in the database on his website.

On the same date, the applicant sends another communication to the school in which he confirms that he knows this information but, in particular, wants to know "When he left school, when he left school, and why did he give a reason, and when he returned to go to college". The college denies your request based on the following reasoning:

"We inform you that the requested information is third-party information, as far as we understand it is subject to data protection legislation. Likewise, it does not certify any legitimate interest to access said information. We inform you that we will contact the Attorney, Mr. XXX if you authorize us to provide you with this information. In the event that Mr. XXX does not authorize us to transfer the requested information, we could only provide it if required by a competent authority".

According to what appears in the file sent, in particular based on the school's statements, the applicant indicated that he considered that he had a legitimate interest on the basis of the fact that he had a binding contractual relationship with the solicitor and on the basis of consequences suffered as a result of actions and omissions allegedly committed by him.

3. On November 12, 2021, the applicant submits to the GAIP a claim from which he requests to know the date of registration and termination of the solicitor in the association, the reason, and date in what was collegialized again.

The reason for the claim is the following: "A negligent attorney who does not respond to claims about his actions or omissions to my detriment"

On that same date, the college informs the applicant that the solicitor has responded to his request, and does not authorize the provision of the requested data.

4. On November 17, 2021, the GAIP sends the claim to the college and requests a report setting out the factual background and the foundations of its position in relation to the claim, as well as the complete file and, if where applicable, specifying the third parties affected by the claimed access.

5. On December 1, 2021, the college sends a report to the GAIP in which it communicates the antecedents that have been exposed, and bases its decision to deny the requested access on the fact that the transparency regulations are only applicable in that which affects the exercise of their public functions, and that the information requested does not belong to this function. On the other hand, he states that the prosecutor has not authorized the communication of this information.

At the same time, it states that the claimant has filed successive complaints with the college against the solicitor affected by the access request, one of which led to the initiation of disciplinary proceedings with the result of a warning, a resolution which the claimant appealed. The appeal was rejected by the Governing Board of the college.

6. On December 9, 2021, the GAIP requests from the college a copy of the transfer that was made to the affected attorney, his opposition to the communication of the information to the person making the claim and his contact details .

7. On December 10, 2021, the college sends the requested documentation to the GAIP, in which is attached the request for consent to the attorney on November 8, 2021, and its statement of non-conformity on November 11, 2021. The attorney's contact details are also attached.

8. On December 29, 2021, the GAIP sends a letter to the attorney informing him of the claim for access to public information filed by the claimant so that, if applicable, he can present the allegations or documents he considers appropriate for the defense of their rights or interests. The file sent does not include the attorney's response.

9. On January 28, 2022, 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 information public and good government.

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 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

The data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, 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, will be considered an identifiable natural person.

location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person".

Article 4.2) of the RGPD considers "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".

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment "is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of 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 these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

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 of the Member States that applies to them in order to reconcile the public's 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).

In the case we are dealing with, it must be taken into account that access to the date of enrollment and withdrawal from the school is requested, by a procurator, the reasons for the withdrawal, and the date of new association

In accordance with article 3.1.b) of the LTC, this law is applicable to professional associations and public law corporations in what affects the exercise of their public functions. And, 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 the professional exercise is adapted to the regulations, deontology 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 and the rules specific to professional associations.
d) (...)".

To the extent that the claimant requests information from the association regarding the attorney's membership status (date of registration and termination from the association, the reasons for termination, and the date of the new association), we are dealing with information that refers to the exercise of public functions of the college. 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, and this information must be considered public for the purposes of article 2.b) of the LTC and, therefore, subject to the right of access (article 18 of the LTC).

It must be noted, however, that this right of access 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

The person making the claim requests from the college information regarding the collegial situation of a solicitor, in particular, the date of registration and termination from the college, reasons for the termination, and the date of the new registration or collegiality.

Firstly, we will analyze the possibility of knowing the information relating to the date of enrollment and withdrawal from the college, including the subsequent date of enrollment, to the extent that the conclusion reached may condition the claimant's access to reasons for termination.

The analysis on access to this information must be carried out on the basis of article 24 of the LTC, discarding the application of article 23 of the LTC, not constituting specially protected data in which it refers to. Article 24 of the LTC provides the following:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights.

2. If it is other information that contains personal data not included in article 23, 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.
[...]."

On the basis of the provisions of this article, the possibility of knowing the date of enrollment and termination, and subsequent enrollment, in the college must go through a reasoned weighting between the public interest in disclosure and the rights of the affected persons, taking into account, among others, the time elapsed, the purpose of the access, the guarantees offered, if there are minors affected or the fact that the intended access may affect security of people

To this end, it should be borne in mind that article 18.2 of the LTC provides that the exercise of the right of access to public information is not conditioned on the fact that a personal interest is involved, as well as not remaining subject to the motivation or the invocation of any rule, but knowing the motivation of the request may be a relevant element to take into account when making the weighting required by article 24.2 LTC.

The claimant, when requesting access, refers to certain circumstances based on which he is dissatisfied with the professional performance of the solicitor affected by the access request. From the rest of the information contained in the file sent, it also appears that your desire to know the dates of registration and termination of enrollment, and new enrollment in the college, responds to the purpose of checking whether it matches with the contracting period of their services.

To this end, it should be taken into account that Law 2/1974, of February 13 on Colleges Professionals, in 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 May 31, 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. Likewise

the information useful for the best defense of the rights of consumers and users must 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.

(...)"

Thus, the specific regulations that regulate 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 the information relating to the date of registration and termination.

However, it is clear that this information, which the professional associations must make public through the register, allows to obtain information relating to the date of incorporation and the date of termination, even if it is only approximate.

The purpose of publishing the register of members is to provide information to citizens about the people who are members at any given time. These active advertising forecasts
allow you to offer this information regarding registered professionals at the time of making the consult the register, but not with respect to the history of the dates of enrollment. In any case, a request like the one analyzed would be in line with the objective pursued by the law to publicize the association of professionals, offering the possibility to also know professionals who have been one for some period of the past

And, from the claimant's perspective, knowing the date on which the professional was registered with the college, the date of termination and the date of new registration, is information from which he can verify whether the professional he exercised the power of attorney subject to all the guarantees and subject to the deontological obligations of the profession, in accordance with the provisions of the collegial regulations. But, in addition, it can also allow him to control the action of the professional association in terms of its obligation to ensure that the action of the members of the association responds to what derives from the current system, especially guaranteeing good practice and the ethical obligations of the profession, and the protection of the interests of users and consumers of professional services (art. 36 of Law 7/2006, of 31 May).

On the other hand, from the point of view of the intrusion that this would entail for the affected professional, it is considered that this would be minimal taking into account the limited scope and nature of the data relating to the dates of registration and termination of the member status, and the fact that it would be information to which 'he would have been able to access it at the time, during the period he was enrolled.

In short, to the extent that the information relating to the dates of registration and deregistration, including the subsequent registration of the solicitor, a priori must not have a special significance in the privacy of the person affected by the request, according to what has been explained, does not seem to respect

of this information, the right to data protection of the attorney referred to in the request for the right of access to this information must prevail.

IV

The claimant also requests access to the information relating to the reason why the solicitor caused dismissal from the school.

In accordance with the provisions of article 1 of the Code of Ethics of the Catalan Prosecutor of the Council of Associations of Prosecutors of the Courts of Catalonia (approved by resolution JUS/1624/2012, of July 25), *"The prosecutor must respect the ethical and deontological principles of the profession established in the General Statute of the Attorneys of Spain as well as the one approved by the Council of the Associations of Attorneys of Courts of Catalonia and the provisions of the association where it is incorporated."*

Article 20 of Royal Decree 1281/2002, of December 5, approving the General Statute of the Prosecutors of the Courts of Spain provides for the following:

"1. The collegiate status will be lost and will result in immediate dismissal:
a) By death.
b) For voluntary cessation in the exercise of the profession.
c) Due to non-payment of ordinary or extraordinary fees and other school fees.
However, the collegiates will be able to rehabilitate their rights by paying the amount owed plus their interest at the legal rate and, where appropriate, the amount of the penalty imposed.
d) By a firm sentence that I obtain the accessory of disqualification for the exercise of the profession.

e) For firm sanction of expulsion from the College, agreed in the disciplinary file.
f) By registration in another College of Attorneys, unless he has become a non-practitioner in the one he previously belonged to.
[…]."

It is worth saying that the Supreme Court declared null and void the cause of dismissal provided for in letter c) *"[...] in that it applies directly to schools belonging to the autonomous community [...]"* (Judgment of the Supreme Court of September 28, 2005).

On the other hand, the statutes of the college provide for the following:

"1. These are the duties of all members:

[...] b) Satisfy, within the indicated deadlines, the ordinary and extraordinary fees agreed by the College, as well as the financial sanctions imposed by the College.

Failure to pay the ordinary or extraordinary fees and the rest of the collegial charges will result in dismissal from the professional College. However, members may restore their rights by paying the amount owed plus their interest at the legal rate and, in their case, the amount of the penalty imposed. [...]

Repeated non-compliance with the payment of the financial sanctions imposed by the College will also result in dismissal from the professional college. […]"

Before, but continuing with the analysis, it is worth saying that the death is ruled out as a reason for the termination, given that in accordance with what has been explained in the antecedents, after the termination the solicitor re-registered with the school and also because he has participated in the procedure for claiming access to public information that we are now dealing with.

With regard to the rest of the circumstances that may be grounds for dismissal from the bar as provided for in the General Statute of the Attorneys of the Courts of Spain (art. 20) and the statutes of the bar, some of these entail the disclosure of special categories of data referred to in article 23 of the LTC, such as those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, and on which this article provides for the need to deny the request unless the person concerned expressly consents through a written communication that must accompany the request.

In particular, the assumptions of letter d) of article 20 of the General Statute of the Attorneys of the Courts of Spain *("sentencia firme que leve consigo la accesoria de habilitación para el ejercicio de la profession"),* or the of letter e) *("sanción firme de expulsión del Colegio, agreed in expediente disciplinario")* include information relating to the commission of criminal or administrative offenses in respect of which article 23 of the LTC establishes the denial of access except in the case of a public reprimand to the offender, or the express consent of the affected person is available.

The Public Administration is endowed by the legal system with administrative powers, among which there is the sanctioning power or *ius puniendi,* that is, the power to impose certain sanctions when an administrative infraction has occurred (art. 25.1 of the Constitution
Spanish).

Reference should be made to Constitutional Court ruling 66/1984, of June 6 (and, before that, STC 2/1981, or 81/1983), which distinguishes between two categories of administrative sanctions: those that protect order general and those that pursue the self-protection of the administrative apparatus and that are the result of a special relationship of subjection, among which includes those of a disciplinary nature.

Although the distinction is somewhat imprecise, the Constitutional Court has been specifying material criteria that facilitate this differentiation. Thus, he has considered that the relations of special subjection are situations from which the citizen integrates into a pre-existing institution that projects its authority over him, apart from his common condition as a citizen, and the fact of acquiring a specific status of individual subject to a public power that is not common to all citizens, as well as that this relationship must be inserted in the organization of public services (SSTC 2/1987, 42/1985, 50/2003 and 81/2009).

The sanctioning power that protects the general order can affect various spheres of life (such as public order, traffic, urban planning, etc.), and all citizens can be active subjects.
In accordance with the aforementioned ruling of the Constitutional Court, these sanctions are *"[...] close to the punitive and demanding ones, in principle, of guarantees that, having their initial field of application in the punitive, are extendable to the sanctioner [...]".*

With regard to administrative sanctions resulting from a special relationship, as would be the case with disciplinary ones, the Administration only seems to pursue its own protection as an organization or institution, with respect to those directly related to it. According to STC 66/1984, these sanctions are *"[...] established for cases of transgression of the obligations included in the regulations applicable to the case and assumed voluntarily [...], sanctions that, in the exercise of a power inserted in the table we have discussed, correspond to the actions of the Administration within the legal framework established for the effect and with submission to the ends that justify them and that, within the consecration of the full submission of the Administration to jurisdictional control in the terms defined today in article 106 of the Constitution, guarantee the jurisdictional protection of the hypothetical transgressor".*

In the case of disciplinary proceedings concerning personnel of public administrations, it must be taken into account that disciplinary proceedings in respect of their workers processed by public administrations are part of their sanctioning power, in this case in respect of their own workers, for the commission of disciplinary administrative infractions.
As can be seen from article 94 of the Basic Statute of the Public Employee (EBEP), approved by Royal Legislative Decree 5/2015, of October 30, and as recognized by jurisprudence (among others STS of July 3, 2012, FJ 6) disciplinary procedures must conform, with some nuance, to the general principles of administrative sanctioning law.

Specifically in relation to the area that deals with us, it is worth highlighting interlocutory order 141/2004 and sentence 188/2005 of the Constitutional Court in which it is considered that there is a relationship of special subjection when public powers are exercised for the organization and control of the exercise of professional activities, to ensure that professional activity is adapted to the interests of citizens, such as the relationship of an architect with his professional association (sentence 219/1989) or that of a lawyer with his association (interlocutory order 141/2004).

Professional associations are public law corporations (art. 35 of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations) that in the exercise of their public functions they are governed by their specific regulations and, additionally, by the regulations on administrative procedure (art. 2.4 of law 39/2015, of 1 October on common administrative procedure of public administrations).

And there is no doubt that precisely the disciplinary power of the colleges constitutes a function that has been expressly qualified as a public function by the current legislation.
This is evident, without any doubt, from article 39.c), 15.3 and 48 of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations.

At the same time, reference should be made to STC 61/1990 (and, subsequently, STC 50/2003) in which the case of imposing a penalty of loss or revocation of license on a private detective is examined, and in which the court holds the following:

"It must be admitted, then, in this case, the punitive nature of the measure, without the distinction between general and special subjection relations, already imprecise in itself, being able to distort that nature of the administrative act and without, for the rest , and this is more important, the possibility that said act affects the rights of the administrator can no longer be considered (in the case of the appeal, the exercise of a professional activity connected with articles 35.1 and 38 of the Constitution) , with the risk of injuring fundamental rights."

In fact, the Constitutional Court has stated in relation to the principle of criminal legality provided for in article 25.1 of the Spanish Constitution, that although the relations of special subjection allow a certain modulation (not exclusion) of the formal and material requirements of this principle in sanctioning matters, this cannot lead to the exclusion of the applicability of this principle in the field of the disciplinary regime in the relations of special subjection, nor of the rest of the principles and constitutional rights related to the exercise of the sanctioning power such as the right to defense and legal assistance, the right to use the relevant means of evidence and the right to the presumption of innocence (STC 61/1990; 66/2007; 162/2008/ 81/2009 or 104/2009).

In this sense, article 69 of the General Statute of the Prosecutors of the Courts of Spain provides that sanctions may only be imposed prior to the initiation of a disciplinary file, which must be substantiated in accordance with the provisions of the Royal Decree 33/1986, of January 10, relating to the Regulation of the Disciplinary Regime of Public Servants of the State Administration, and corresponding legislation, without prejudice to the specialties contained in the statute itself. And, article 26 of Royal Decree 33/1986, provides that the processing, communications and notification must conform to the administrative procedure law.

In similar terms, the statutes of the college are pronounced, which provides that the imposition of sanctions must be carried out within the framework of a previously initiated file, which guarantees the principles of presumption of innocence, audience to the affected person , the motivation of the final resolution and separation of the instructing and decision-making bodies.

It seems clear, therefore, that we are dealing with the exercise of an administrative power in the exercise of a public function of the professional associations, which must be subject to the principles of the *ius puniendi* of the administration, and which must apply the same guarantees for the affected people. That being so, it would not seem justified to deprive persons sanctioned under a disciplinary scheme which forms part of a public function from the provisions of Article 23 LTC.

But in addition, if we analyze them from the point of view of the impact that the disclosure of this type of information can have on the private lives of the people affected, there also does not seem to be any reason to make a distinction that leads to the exclusion of disciplinary sanctions from what is established in article 23 LTC.

It is necessary to take into account the categories of data that were included in article 15.1 LT and article 23 LTC, due to the data that were provided as specially protected in article 7 of Organic Law 15/1999, of December 3, on the protection of personal data (LOPD), which included in the category of specially protected data the data relating to the commission of criminal or administrative offenses (7.5), which granted special protection to administrative violations. And the truth is that the reasons that led to granting administrative sanctions a special protection are fully applicable to disciplinary infractions.

It is obvious that the disclosure of administrative offenses can reveal information about a person's conduct, or better, about aspects of his conduct that have given rise to a reprimand.
In certain cases, it is the legal system that provides for the disclosure of the sanctions imposed (in the case of sanctions consisting of a public reprimand or other cases in which the publication of the sanction is foreseen). But outside of these cases, it must be taken into account that the

disclosure of this type of information may lead to a significant interference in the right to data protection with regard to its public image and, especially, due to the risks of discrimination or stigmatization that it may have in different areas (social, professional, work, or even family). All these considerations are fully applicable to disciplinary sanctions, even, given their nature, with more reason than other administrative sanctions whose disclosure may have less interference.

Therefore, it would not be justified to exclude from the scope of protection of Article 23 LTC infringements and disciplinary sanctions.

And the different wording with article 21.1.b) of the LTC, which foresees that access to public information can be denied or restricted, is not an obstacle to reaching this conclusion if knowing it can prejudice the investigation or sanction of criminal, administrative or disciplinary offences, unlike article 23 of the LTC which only refers to the denial of access when it contains information relating to administrative offences, among other categories of data

It should be borne in mind that both precepts give the possibility of limiting access to public information, but on the basis of two different perspectives. Thus, while article 21.1.b) of the LTC aims to limit access in order not to prejudice an investigation of a possible infringement or the execution of a penalty, to guarantee the procedure itself, the article 23 of the LTC limits access on the basis of the data protection right of the affected person.

Beyond that, although the lack of precision in this aspect of Article 23 is evident, the explanation lies not in the fact that it was intended to be distinguished from Article 21.1.b), but in the fact that the wording of article 23 obeyed precisely the reproduction of article 7.5 of the LOPD, with respect to which this Authority has systematically considered that it also includes disciplinary offenses (reports CNS 45/2015, CNS 14/2018, IAI 47/2017, IAI 30/2021 or IAI 69/2021, among others).

And not only this Authority, but also the bodies guaranteeing the right of access to public information have been interpreting it in this sense. Examples include the resolutions of the GAIP issued in claim procedures 16/2016, 249/2018, 755/2020, 47/2021, 331/2021 or 613/2021, among others, which had been interpreted in the same meaning as this Authority or the resolutions of the Consejo de Transparency y Buen Gobierno 0731-
2020, 0078-2021, 0942-2020 or R.0498-2020, among others.

On the other hand, currently the provisions relating to the processing of data relating to infringements and administrative sanctions are found in article 27 of the LOPDGDD, as the LOPD has been repealed in accordance with the terms of the single repealing provision of the LOPDGDD.

Article 27.1 of the LOPDGDD provides, in relation to article 86 of the RGPD (treatment and public access to official documents), that the processing of data relating to infringements and administrative sanctions requires that the person responsible is the competent body for the instruction of the sanctioning procedure, for the declaration of infringements or the imposition of sanctions, and that the treatment is limited to the data strictly necessary for the purpose pursued by it.

It is clear that the citizen who exercises the right of access to public information is not a competent person in the sense of article 27.1 of the LOPDGDD. In these cases, the second section of this article provides that the treatment must have the consent of the person affected or be authorized by a rule with the rank of law, which must regulate the additional guarantees for the rights and freedoms of affected In other words, this section foresees two cases that enable the treatment:

a) The consent of the affected person, or
b) That the treatment is authorized by a rule with the rank of law, which also regulates additional guarantees for the rights and freedoms of those affected.

In conclusion, regardless of whether article 23 of the LTC does not contain an express reference to infractions and disciplinary sanctions, from the data protection regulations it cannot be considered that they are excluded from the reference to infractions and sanctions administrative included in this article.

Therefore, in the event that the cause of dismissal from the college corresponds to the case referred to in letter e) of article 20 of the General Statute of the Prosecutors of the Courts of Spain *("Por sanción firme de expulsion from the College, agreed in the disciplinary file"),* or letter d) *("Por sentencia firme que leve consigo la accesoria de habilitación para el ejercicio de profesión"),* this information can only be accessed if it is a public admonition to the offender, the express consent of the affected person is available or they themselves have made this information manifestly public.

It must be noted that, according to what appears in the file sent, the attorney concerned has not consented to the communication of his data to the person making the claim, nor is it clear that he himself has made this information manifestly public.

On the other hand, the school regulations do not consider the reprimand - whether public or not - as a reason for dismissal from the school. Therefore, the possibility that among the information to which access is requested there is information related to public warnings must be ruled out.

In short, in accordance with what has been explained, in the case at hand access to the reason for the termination must be denied if it corresponds to a criminal or administrative sanction, including disciplinary sanctions.

v

Regarding the other reasons for leaving school that do not entail the disclosure of categories special data in the terms of article 23, as would be the case of voluntary withdrawal, enrollment in another school or non-satisfaction of the ordinary and extraordinary fees agreed by the school, has to resort to the reasoned weighting between the public interest in disclosure and the rights of the affected persons, in accordance with the provisions of article 24.2 of the LTC.

It should be remembered that the claimant, when requesting access, refers to certain circumstances from which his disagreement with the professional performance of the solicitor affected by the access request is evident, as well as, from the rest of the information contained in the file sent, your desire to know the dates of registration and deregistration, and new registration in the

school, in order to verify the coincidence with the period in which he contracted his services.

The purpose of the transparency regulations is to *"establish a system of relations between people and the public administration and other obliged subjects, based on knowledge of public activity, the encouragement of citizen participation, the improvement of quality of public information and administrative management and the guarantee of accountability and responsibility in public management" (article* 1.2 LTC), or in other terms, establish the possibility of offering tools to citizens
for the control of the performance of the public authorities.

On the basis of this purpose, it does not seem that disclosing the fact that a member resigned due to voluntary cessation in the exercise of the profession, can contribute to controlling the exercise of the public functions of the college ·legislation - purpose of the transparency regulations. And, the fact of knowing this information can have a significant impact on the privacy of the registered professional who has been dismissed (especially if, due to exclusion, it may end up confirming that the dismissal was due to a penalty). This impact on privacy is not justified by an interest of the person making the claim in the face of disagreement with the professional performance of the member, as is the case at hand, given that there are other mechanisms to act against his performance.

On the other hand, with regard to the assumption of dismissal from the college due to non-payment of ordinary or extraordinary fees, and other collegial charges, find out information about the financial rights not collected by the college, not only those of the affected professional but of all the other professionals as a whole, it would indeed allow the claimant to control that the exercise of the public functions of the college is carried out in accordance with what is provided for in the regulations, including the school's own statutes. But this would not be linked to the particular information of the affected member, but of all members who have outstanding debts, without the need to identify them in a generalized way.

In any case, as can be seen from the file sent, the purpose of the claimant is not to control the exercise of the public functions of the college, but to learn about the procurator's professional circumstances when he is dissatisfied with the exercise of his functions.

Knowing this circumstance obviously mainly affects the attorney's professional sphere, but it cannot be denied that the social and personal sphere will also be affected, to the extent that knowing that the termination occurred as a result of the lack of payment constitutes economic information of the attorney, which can inevitably be related to his personal financial statement.

On this basis, it is considered that the protection of the attorney's data must prevail over the public interest of the information, given the irrelevance of this information both to be able to evaluate the services provided and to guarantee the rest of the rights that correspond to him as a user of the service.

With regard to the reason for being removed from the association based on registration in another association of solicitors, it is necessary to take into account the obligation to publish certain useful information for consumers and users, through the single window (art. 10 of Law 2/1974 and 40 bis of Law 7/2006).

Thus, to the extent that the specific regulations that regulate professional associations determine that if you have been registered in another association, this information must be published, as well as the professional qualification situation, in the sense of whether the professional is in practice or not, a priori it does not seem that it should be relevant to the rights and freedoms of the affected solicitor that the claimant may know if the reason was because he was registered in another school This information could be accessible not only through the register of members of the new college, but also through the list of attorneys of the General Council of Attorneys of Spain.

In short, it does not seem that in this specific case, registration in another school, the right to data protection of the procurator affected by the access request should prevail.

conclusion

From the point of view of data protection regulations, the relative information can be provided on the dates of enrollment and deregistration, but with regard to the reason for deregistration, access can only be given when the reason is to have been registered in another professional association.

Barcelona, March 3, 2022