

IAI 3/2022

**Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against a city council for the denial of the request for a complete copy of the administrative file through which it was activated and processed the Protocol for the prevention and treatment of workplace harassment, as well as its resolution.**

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim presented against a city council for the denial of the request for a complete copy of the administrative file through which the Protocol for the prevention and treatment of workplace harassment was activated and processed, as well as its resolution.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, in accordance with the report of the Legal Counsel, I inform you of the following:

**Background**

1. On January 20, 2021, a worker who had reported a situation of workplace harassment to a city council presents to this council a request that she calls a complaint in which she expresses her claim that it be recognized as a work accident the periods of temporary incapacity suffered as a result of a situation of workplace harassment, and as an evidentiary element requests the delivery of the following documentation from that council:

- "- Complete copy of the Protocol applied and its resolution.
- Evaluation of occupational risks and, in particular, of psychosocial risks.
- Measures taken and their follow-up.
- Justification of the change of functions (and who does the same now). "

2. On September 22, 2021, the applicant is notified of the resolution of the Deputy Mayor of the Central Services and Human Resources Area, by which it was agreed that:

"Regarding the request for a copy of the root file of the activation of the protocol for the prevention and treatment of workplace harassment, in accordance with article 31 of Law 19/2014, of December 29, of transparency, access to public information and good governance, it is approved to transfer the request to the rest of the whistleblower workers listed in the file Ref.

2/2020/SQ0065 and the adoption of a procedure for objections to these third parties for a period of ten days, in case these may be decisive for the meaning of the resolution" and he was warned that this procedure suspended the deadline resolution of access to the requested documentation until the receipt of the allegations or the expiration of the term to present them.

3. On December 3, 2021, the applicant submits a claim to the GAIP, in which she requests: *"Complete copy of the administrative file through which the Prevention Protocol was activated and processed and the approach to workplace harassment, due to harassment done to me, as well as its resolution"*.
4. On December 10, 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.
5. On January 31, 2022, the City Council sends a report to the GAIP in which it is stated that the request for access was transferred to the 4 people who could be affected and that in the process correspondingly all of them expressed their opposition to access.

The report also states that on December 15, 2021, they provided the applicant with the following information:

- "- Identification of the publication of the Protocol for the prevention and treatment of harassment in cases affecting dignity and discrimination at work, approved by the Plenary of the city council in the session of December 28, 2017 (BOPB dated 03/21/2018).
- Occupational risk assessment of this service dated March 2, 2021, with the work place sheet (IRIME) of economic promotion technique attached to the communication.
- Justification of the change of functions, together with the report issued by the head of the Economy and Economic Promotion Area and the attached head of the Economic Promotion Service.
- Extract from the development of the proposals indicated in the conclusions of the Psychosocial Risk Assessment Commission (CVRPS) based on the activation of the workplace harassment protocol."

Among the documents sent is a legal report issued regarding the admission to processing of the application submitted, in which it is stated that "The complainant states that she received communication of the final assessment issued by the Commission for the Assessment of Psychosocial Risks (CVRP) linked to the file activated by the complaint of 5 workers assigned to the Economic Promotion service, which was notified on 02/11/2020 (Exit Record 2020001206), which it provides as annexed documentation to the complaint, incorporated in the so-called "bloc four".

6. On February 1, 2022, the 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

### 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 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, whether 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 legitimation of data processing that is based on the need for one of the legal bases established in article 6.1 to apply. 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 applicant's access to the personal data that may contain the requested information 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.

However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data.

### III

At the outset it can be said that from the point of view of data protection regulations it does not pose any problem that the person requesting the copy of the "Protocol for the prevention and

the approach to harassment in cases that affect dignity and discrimination at work", approved by the Plenary of the city council in the session of December 28, 2017, nor the Assessment of Labor Risks if it does not incorporate data personal

With regard to the rest of the requested documentation that contains personal data, as can be expected to happen in the case of the documentation resulting from the application of the municipal Protocol "for the prevention and addressing of harassment in cases that affect dignity and discrimination at work", which, as indicated, was activated as a result of the complaint presented by the claimant and other workers, the measures taken and their follow-up as well as the justification for the change of functions, which will contain information about the claimant herself as well as the other complainants and the managers of the area and other staff of the City Council that have intervened in the procedure, it will be necessary to apply the criteria derived from articles 23 and 24 of the LTC.

Article 23 of the LTC establishes:

"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, **health** and sexual life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents by means of a written which must accompany the application."

Given that the documentation refers to a file for a situation of workplace harassment may provide that it contains health data of the person making the claim (information related to their absence from work, psychological evaluations, etc.).

In addition, it must be taken into consideration that according to the information contained in the file, four other council workers also filed complaints for harassment. These whistleblowers may have intervened as directly affected by the harassment, either reporting the situation of harassment of the complainant or providing information about situations of harassment to other municipal workers.

Consequently, it cannot be ruled out that the claimed documentation may also contain special categories of data, relating to these other complainants or third parties. If so, access to this information would need to be excluded.

With regard to the claimant's health data, as this Authority has repeatedly highlighted, the limit of article 23 of LTC would not be applicable with respect to access to the data itself the person claiming In fact, as explained in the following rationale, under Article 15 RGPD the claimant has the right to access her own data, including those that are part of special categories of data, with the limitations that are may derive from the existence of rights of third parties (art. 15.4 RGPD) and, eventually, from the exceptions that may derive from rules with the rank of law in accordance with article 23 RGP, which are not given in the case of the claim.

#### IV

With regard to the information about the employees or public officials in charge of the processing and resolution of the files, which may be included in the requested documentation, article 24.1 of Law 19/2014 provides that "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".

Article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information, specifies that pursuant to the provisions of Article 24.1 of Law 19/2014, of 29 December, "merely identifying personal data are those consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and postal and electronic addresses, of professional contact, referred to the staff at the service of public administrations, senior officials and managerial staff of the public sector of public administrations".

Therefore, facilitating the claimant's access to the merely identifying data (name and surname and position) of public employees who, in the exercise of their functions, have participated in the requested files, in the terms indicated, in principle not would be contrary to the right to the protection of personal data.

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Regarding the rest of personal data, the provisions of article 24.2 must be taken into consideration of the LTC that establishes:

*"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. 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.*

*[...]."*

In accordance with the provisions of article 18.2 of the LTC, 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 being subject to the motivation or invocation of any rule, however, knowing the motivation of the request can be a relevant element to have in the weighting that needs to be done between the right of the applicant to access the information and the right to data protection of the affected persons for that access.

The first issue that must be taken into consideration in the weighting of rights is that the information requested contains data of the person making the claim. Article 15 of the RGPD provides for the following:

*"1. The interested party will have the right to obtain from the person in charge of the treatment confirmation of whether or not personal data that concern them are being processed and, in such case, the right to access the personal data and the following information: a) the purposes of the treatment; b) the categories of personal data in question;*

*c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations; d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period; e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment; f) the right to present a claim before a control authority; g) when the personal data has not been obtained from the interested party, any available information about its origin; h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

2. [...]

*3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.*

*4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."*

In accordance with this article, the claimant has the right to access the information about her that appears in the claimed documentation. In addition, taking into consideration that the information contained therein may also originate from the statements of other complainants or other persons who may have intervened in the procedure as witnesses, the right of access recognized by the article 15 of the RGPD would also cover knowing the identity of the people who have provided the information, to the extent that it would form part of their right to know the origin of the data. Nor can it be overlooked that insofar as it concerns workers from the same municipal area, the identity of the people who participated in the file and were able to make statements in it was previously known to the person making the claim.

But, in addition, if we analyze the purpose of the access, in the case at hand, the request for information is made in the same letter in which the claimant requested that it be recognized as an accident of work the periods of temporary incapacity that he had suffered as a result of a

situation of workplace harassment, as an evidentiary element. To the extent that the requested information may be necessary to exercise your labor rights, this would be an element to be taken into consideration in favor of access to the information.

In any case, the existence of the right of access recognized by the data protection regulations (Article 15 RGPD) will favor the weighting referred to in Article 24.2 of the LTC in favor of access to the own data contained in the complaint.

All of this, except that with respect to the identification of these third parties there is some element that, depending on the personal situation of these people, must lead to a limitation of this access. In this sense, disclose information about the identity of these third parties people who have been able to provide information about the claimant acted as complainants or witnesses, they may be affected to the extent that they are people who share the work environment, and that their statements may have contributed to the conclusions of the application of the protocol. The disclosure of what they may have said or not said regarding the person making the claim and the facts reported could end up negatively affecting the working relationships of these people.

For this reason, in order to find out if there are personal circumstances or reasons that would justify preserving your identity, the Authority has noted the special relevance of complying with the hearing procedure provided for in article 31 of the LTC , which establishes:

- "1. If the request for public information may affect the rights or interests of third parties, in accordance with the provisions of this law, in the event that the potential affected are identified or are easily identifiable, they must be transferred from the request, and they have a period of ten days to present allegations if these may be decisive for the meaning of the resolution.
2. The claims procedure referred to in section 1 suspends the deadline for resolution.
3. The transfer of the request must indicate the reasons for the request, if they have been expressed, but it is not mandatory to reveal the identity of the applicant.
4. The applicant must be informed of the transfer of the application to third parties and of the suspension of the deadline for issuing a resolution until the allegations have been received or the deadline for presenting them."

According to the documentation sent, the city council claimed, in application of article 31 The aforementioned LTC would have transferred the request for access to 4 workers, who would have expressed their opposition to access without arranging, however, any personal circumstance or reason in which they base their opposition to access.

As this authority has previously highlighted (among others in the IAI 38/2018 report), knowing the position of the affected third parties and the circumstances or reasons they may have for objecting is always an element that it could be relevant when deciding to enforce the right of access or the right to privacy of these third parties. But in any case, mere opposition is not sufficient to limit access, since in order for the allegations made to be taken into consideration in the weighting of rights, they must be based on specific personal circumstances that demonstrate that the access to the requested information may produce real damage to your rights or interests.



In any case, it must be taken into account that, in accordance with the principle of minimization, the data subject to treatment must be adequate, relevant and limited to what is necessary for the purposes for which they are treated (Article 5.1.c RGPD ).

It cannot be ruled out that in addition to information about the claimant herself, the complainants or other complainants have provided information about themselves or other municipal workers. Regarding these statements that may have been made by witnesses or other people who are not related to the person making the claim (for example aspects of their own personal or work life, or regarding other situations in the work or personal life of other workers) the result of the weighting of rights will be different.

In this case, it does not seem that for the purpose expressed by the claimant relating to the exercise of her labor rights, it is necessary to access this information from third parties who do not have a direct relationship with her person and the complaint for harassment that she submitted . Thus, without prejudice to the fact that at the appropriate procedural moment and through the intervention of the corresponding judicial body, it may also use these means of proof, if it considers it appropriate, the right to data protection should prevail 'these third parties on the claimant's right of access. And, therefore, this third-party information should be deleted from the requested documentation.

Therefore, in the case at hand, in principle it is possible to identify the third parties who have provided information about the claimant, but it will be necessary to exclude their contact details or other details (for example, the ID number) of these persons or others to the complainants who may appear in the claimed documentation and which are excessive for the intended purpose.

## **Conclusions**

The data protection regulations do not prevent the claimant's access to the claimed documentation, including their own personal data and the identity of the people who would have intervened in the exercise of their functions in its processing, as well as the identity of the other complainants and of the witnesses who have intervened providing information about the claimant, as stated in the documentation, unless there are concrete circumstances that justify the limitation regarding these third parties.

It is necessary to delete from the information the contact data of the other reporting persons or of the third parties who have provided information about the claimant (for example, the ID number) or other data of these or of third parties that may appear in the claimed documentation, which are excessive for the intended purpose.

Barcelona, March 3, 2022