

IAI 8/2022

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 department for the denial of the request for access to all the information/ documentation of some training courses of the 2016-2017 academic year.

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 against a department for the denial of the request access to all the documentation of training courses for the 2016/2017 academic year.

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 December 17, 2021, a citizen submitted a request for access to public information to a department with the following content:

"All the documentation of all the training courses, the documentation of which should have been kept by (...), from the 2016-2017 academic year."

The applicant stated this reason in the application: "I have detected in two different courses, that there is almost no documentation."

2. On January 28, 2022, the Department required the applicant to amend the application, in accordance with the provisions of article 60 of Decree 8/2021, of February 9. On January 30, 2022, the applicant specified that he wanted access to:

"I refer, for example, to the course programs, the course minutes, the attendance charts, the surveys carried out, the IPAAF questionnaires sent to the trainers, the IPAAF questionnaires sent to the attendees, the IPAAF questionnaires sent to the management teams, the results of the questionnaires, the approval of the education inspection for certification, and in general, any documentation/information related to the training courses referenced in the SAIP."

3. On February 3, 2022, the Department resolves the request for access to information in the following terms:

Partially estimate the request for access to public information, file (SAIP) (...) as detailed below: First. Estimate the right of access to all the documentation relating to the two training courses, coordinated by (...) during 2016-2017, in which the applicant is listed as the person responsible for the activity (...).

Consequently, supply: - The report issued(...)".
- The Excel file, (...).

second Do not admit the request for access to all the documentation, in any format, regarding the 73 training courses, coordinated by (...) during the 2016-2017 academic year, in which the applicant is not listed as responsible or as a trainer of the activity, in accordance with the reasons set out in the third-party legal basis of this resolution.

However, and in order to guarantee the main purpose that motivates this request, we provide the person requesting the sufficient and necessary data to identify the digitized documentation that exists in (...), in relation to the 73 referenced courses.

Consequently, provide: - The Excel file, (...) personal data and links have been deleted in accordance with the reasons indicated in the third legal basis of this resolution.
- The pdf document, named "12_Courses".

4. On February 4, 2022, the applicant submits a claim to the GAIP, in which he requests: "All the information/ documentation of training courses from the 2016-2017" and states that: "There is a lack of information that is highlighted in the administration's own response". In the claim, the mediation procedure is requested.

5. On February 8, 2022, the GAIP requests the complained department to issue a report on the complaint submitted, identify the third parties affected by the access and send the complete file to which it refers.

6. On February 28, 2022, the department issues the report in relation to the claim submitted.

7. On March 7, 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 regarding access to the

public information, establishes that if the refusal is based on the protection of personal data, the Commission must request a report from the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (art. 4.1 of Regulation 2016/679, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and by which Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

II

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 legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. 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) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment.

The reference to the legal basis established in accordance with the internal law of the Member States referred to in this article requires that the development rule, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 EC), as recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the 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."

It follows from all this that the claimant's access to the personal data that may contain the requested information on the basis of compliance with a legal obligation by the Department (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

The claimant requested the Department to access all training courses for the 2016/2017 academic year held by an organization.

The Pedagogical Resource Centers (CRP) are, according to the information on the Department's website, "teams for the dynamism and advice of professionals and educational centers for educational improvement and transformation" whose functions are: "The design, the planning and the implementation of the advisory practice at the center accompanying it in the processes of educational transformation and improvement", and the "detection, collection and dissemination of reference educational practices of the teaching staff in the area as well as"

According to the documentation sent with the claim, the training courses it refers to are courses organized by the department and managed by the CRP, for the continuing training of teaching professionals in the educational centers in that area.

The person making the claim requested access to: "the course programs, the course minutes, the attendance grids, the surveys carried out, the IPAAF questionnaires sent to the trainers, the IPAAF questionnaires sent to the attendees, the IPAAF questionnaires sent to the teams managers, the results of the questionnaires, the approval of the education inspection for certification, and in general, any documentation/information related to the training courses referenced in the SAIP".

It can therefore be expected that this documentation will contain personal data of those attending the courses, which, in principle, should be understood as teaching staff of educational centers, trainers and collaborators, those responsible for the courses, of the management teams and, eventually, of the public employees in charge of processing the files relating to these courses.

With regard to this access, it is necessary to take into account the circumstance that is highlighted in the report issued by the Department according to which the claimant would have participated as a person responsible for the training activities of some of the claimed courses (as indicated, two of the 75 courses of the 2016/2017 period).

At the outset it can be said that, from the point of view of data protection regulations, access to the course programs referred to in the request does not pose any problem, insofar as they do not contain personal data, nor the surveys carried out or other types of information about the courses that have been carried out anonymously.

In any case, with regard to the requested documentation that contains personal data, the criteria derived from articles 23 and 24 of the LTC must be applied.

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."

It should be taken into consideration, as this Authority has previously highlighted, that psychotechnical tests and those involving the evaluation of aspects of personality, including personal interviews, involve the processing of special categories of data. However, in principle it does not seem that the courses subject to the claim contain this kind of tests. In any case, if this were the case, it would be necessary to preserve its confidentiality and limit access.

Likewise, it cannot be ruled out that the requested files contain special categories of data in terms of article 23 LTC, because they were provided by one of the people attending (for example, teachers or students with disabilities, need for adaptation of training, etc.), in which case access should also be limited.

Regarding the information about the employees or public officials in charge of the processing of these training courses, which may eventually be included in the requested documentation, such as the approval of the 19/2014, provides that "Access to public information, article 24.1, 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, facilitate the access of the person claiming to the merely identifying data (name and surname and position) of public employees who, in the exercise of their functions, have participated in the processing of the claimed courses, in the terms indicated, in principle it would not be contrary to the right to the protection of personal data.

On the other hand, the information about the officials (teachers) who participate as assistants in the training courses cannot be considered to be merely identifying data for the purposes provided for in article 24.1 LTC, given that this data may be related to their attendance, activity or course evaluation, and can be linked to your professional file. Regarding this information, article 24.2 LTC must therefore be applied.

v

With regard to the rest of the data, it is necessary to take into account article 24.2 of the LTC which establishes the following:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with 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.

[...]."

First, access to information on the courses in which the claimant acted as responsible is analysed.

According to the Department's report, it appears that, in principle, no personal data would be retained in relation to these courses for which he acted as responsible. Thus, the Department states: "In this sense, it was clarified that the evidence available in the CRP of (...), in relation to the courses (...) which were collected at the end of the training, do not require of any access credentials. These are links and materials that are currently no longer available. Only the evidence document, supplied to the person claiming in the course of the proceedings (...), with the list of links and resources created at that time, and which are currently no longer accessible, is kept.

However, in the event that any document with personal data relating to these courses is still preserved, the fact that the claimant was responsible for it at the outset would be relevant, among other issues, because the documentation will contain his personal data.

With regard to access to the data itself, article 15.1 of the RGPD regulates the right of interested parties to obtain from the data controller confirmation of whether their data is being processed and, if so, to access the information that the same article provides.

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 data itself to the records of the claimed training courses.

With regard to the information of third parties contained in the records of these courses, it must be taken into account that this is information to which the claimant has already had access as a result of his duties as a manager.

Thus, the person in charge will have access to both the list of attendees and the attendance grids, evaluation reports, trainers' data, etc.

From this point of view, the harm that can occur in the privacy of these people with respect to information to which the person in charge of the training has already had access must be considered minor

In addition, according to the Department's report, it would have decided favorably on access in its capacity as responsible.

Therefore, in this case the weighting of the rights at stake must be in favor of access, as it seems to have already happened given that it seems that the Department would have provided the information it has in relation to these two courses.

VI

In the rest of the files of the claimed training courses, in which, according to the information provided, the claimant has not participated either as a trainer or as a person in charge, the weighting provided for in article 24.2 of the LTC has been to do analyzing on the one hand, the public in

or private, in access, and on the other hand the effect on the privacy of the interested persons who may appear in the course files.

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, nor is it subject to motivation or the invocation of any rule. However, knowing the motivation of the request can be a relevant element in the weighing that must be done between the right of the applicant to access the information and the right to data protection of the people affected by that access.

The only purpose stated in the request for access to information made by the claimant is to verify whether all the documentation that should integrate these files exists. This purpose, which could be linked to the retention of accounts of the department's actions, would coincide with the purpose of the Transparency Law included in article 1.2 of LTC which establishes that "the purpose of this law is to establish a system of relationship between people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of retention of accounts and responsibility in public management". It is in this context that it is necessary to assess whether or not access to the personal information contained in the records of the claimed courses would be justified.

First of all, with regard to the lists of those attending the courses, article 9.1. of Law 19/2014, in matters of transparency in the organization and administrative structure, obliges the administrations to publish the lists of those attending the courses, the lists of people proposed for participation in a training process should be information available on the transparency portal.

The provisions of this article have been developed by article 22 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereafter RLTC). which establishes:

- "1. For the purposes of letter g) of article 9.1 of Law 19/2014, of December 29, lists that may be created to access the training and promotion processes are understood to be lists that contain personnel in the service of public administrations admitted to non-mandatory training activities directly related to internal, economic or professional promotion, organized by each of the public administrations.
2. For these purposes, the lists must publish the data relating to the identification of the names and surnames of the persons admitted, the workplace they occupy and the organic unit in which they are integrated, the unit that manages the activity and a description of the training activity, which must include its code, year and start and end dates.
3. The information must be published on the Transparency Portal of Catalonia on the start date of the training activity, and must remain there for a period of two months from the end date of the activity training."

Therefore, the administrations must make public the lists of people in the service of the public administrations admitted to participate in training activities of non-compulsory reception organized by the public administrations, as it seems that the courses of

training to which the claim refers. The obligation to publish covers the data relating to the name and surname of the persons admitted, the job they hold and the organic unit in which they are integrated, as well as the unit that manages the activity and a description of the activity formative

The weighting of the interests at stake must take into account both the fact that the information about those attending the courses has been the subject of advertising in accordance with the active advertising obligations contained in the transparency regulations, and the fact that no it seems that greater harm may occur to these assistants due to the communication of their identifying data. Therefore, the right of access to this information of those attending the courses should prevail.

A different question would be the information relating to those attending the courses that may be included in the attendance charts referred to by the claimant. Although in order to achieve the purposes of the transparency legislation relating to the control of public activity and the management of public resources it may be relevant to know whether the public employees admitted to the training courses attend them, it seems that this purpose could achieve the same without sacrificing the privacy of public employees by providing information anonymously. It should be borne in mind that, in accordance with the principle of minimization (Article 5.1.c) RGPD, personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. To achieve the purpose of controlling public activity, it may be excessive to access the lists containing the identification data of the attendees and their presence or not at the different sessions of the course. It should be remembered in this sense that, in general, the transparency regulations seek to make possible a certain control of administrative action, but in this case, if the information about the attendance of each of the people enrolled in the course was facilitated, what would be allowed, it would not be so much a control of the administration, as a control of the people registered.

The claimant also requests the minutes of the courses. This information is not included in the documentation sent, but it can be expected to contain the identification data of the people attending the courses along with grades or evaluations on their use of the course. Therefore, it would be personal information that goes beyond what the LTC foresees that must be made public in the training processes of public employees and that, in the absence of any other justification that could justify the need to know such specific aspects like the personal evaluations made regarding the use of the courses by each of the attendees, it would also be excessive for the purpose of controlling the performance of public administrations and resource management (Article 5.1c) RGPD). And more so if the specific purpose alleged by the claimant is taken into consideration, which would be to verify whether there is all the documentation that should be part of these files. This purpose could also be achieved without accessing the personal data contained therein.

The same conclusion can be reached regarding the personal information that may be contained in the IPAAF questionnaires (reports on planning and utilization of training activities) of trainers, assistants and management teams. Regarding this information and, to the extent that it collects personal assessments and the contributions made by both the attendees and the trainers and the management teams regarding the training activity, as well as the evaluation of the attendees and trainers, the control purpose of the action of the administration and the management of the resources being pursued, and basically the assessment of whether the files incorporate the required information, can also be achieved without sacrificing the privacy of the persons concerned, in such a way that, in the absence of of other el

access to this personal data should be limited. Therefore, it would be necessary to facilitate access to the requested documentation with the prior anonymization of this data in terms of article 70.6.a) of the RLTC.

On the other hand, it does not seem that there should be any inconvenience from the point of view of data protection regulations in providing the identification data of the person or persons participating in the courses as trainers, limited to their first and last name in the insofar as it is information linked to the activity being taught.

From the point of view of the right to data protection of the people who have acted as trainers, it must be taken into consideration on the one hand that the expectations of privacy they may have must already incorporate that their identity may be the subject of publication in the dissemination of the courses, as well as the least damage to their rights to the extent that only their identifying data is recorded. In fact, the fact that it is merely identifying data is provided as a weighting criterion in article 15.3.c) of the LT, expressly establishing that it is necessary to take into consideration "The least prejudice to the rights of those affected in case that the documents only contained data of a merely identifying character."

Conclusions

The data protection regulations do not prevent the claimant's access to the documentation of the courses in which he/she participated as a person responsible for the training activity.

With regard to the courses in which he did not participate as responsible, the data protection regulations would not prevent the claimant's access to the merely identifying data of the public employees who had participated in the management of the courses, to the staff relationship teacher who attended as a student, and the trainers in charge of teaching. Regarding the information that contains data on attendance, evaluations and/or scores, the personal data contained in the documentation of the training courses must be anonymized beforehand.

Barcelona, April 1, 2022