

IAI 12/2022

Report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim submitted by a citizen for denial of access to information relating to his dead mother

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 by a citizen against the tax administration for denying access to information relating to his dead mother.

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

Background

1. On December 26, 2021, a citizen sends a letter to the tax administration in which he requests "the documentation and public information contained (...) of my late mother (...)."

Specifically, request a "full/complete copy and delivery in an "electronic/digital/telematic" form of ALL the file(s) [DETAILED]:

1. Full/integrated copy of ALL declarations and procedures on the Personal Income Tax [IRPF], (...). Including "modifications", "rectifications", "parallels", etc. If there were any and with the corresponding motivation in case of having it (and if it happened, if it was voluntary and/or at the instance of the administration).

(...)

2. Full/integrated copy that is expressly identified; (Name and surname; in broad, concise, express, extensive, etc.) to the people who attended and/or presented them. And it is expressly identified; if they were "physical persons", collaborators and/or "legal persons" and/or "public officials". (If you are a "legal entity" and/or "public server", -Name and surname- together with your identification numbers [BOTH, based on "Article 15.2, LTAIPBG" and "Art. 53.1-b, LPACAP", respectively and the jurisprudence of the TS and the TC].

3. Full/integrated copy, of which they were presented and/or processed in person. Or they were presented, telematically/digitally/electronically. (identify expressly; his/her number/s and surnames, in a broad, concise, express, extensive, etc.. form). In addition to the public entry/exit registration documents, together with their vouchers and/or acknowledgments of receipt, (whether they were made in physical form, or electronic/digital/telematic).

4. Full/complete copy, if this is "administration"; transferred, used, transferred, processed these IRPF declarations, with express identification of whom and for what purpose they were treated and:

The purposes of the treatment, as well as the categories of personal data that are treated.

The recipients or categories of recipients to whom said personal data have been communicated, including, as the case may be, recipients in third parties or international organizations.

If there are automated decisions, including the creation of profiles, significant information about the logic applied, as well as the importance and expected consequences of said treatment.

If the personal data has not been obtained directly, the publicly available information about its origin.

5. Full/complete copy of public information and documentation; if you had:

DEBTS in the tax administration.

If he held any rights and/or public benefits (direct, indirect and/or family). Together with their receipts and public documents. Plus the documents and receipts, and the individual amount by month and/or day. In its entirety

If he had a benefit due to a degree of recognized disability. In what degree and % and together with their receipts and public documents. Plus the documents and receipts, and the individual amount by month and/or day. In its entirety

(...)."

2. On January 25, 2022, the tax administration issues a partial assessment resolution for access to the requested public information in the following terms:

"1. Dismiss the request for access to the tax information held by (...), relating to Mrs. (...).

2. Inform the applicant that in the (...) there is no file or procedure related to Ms. (...), as well as that on 17/01/2022, the request for access to the tax data relating to the personal income tax of Mrs. (...) to the state tax administration for not being competent (...) in relation to personal income tax.

3. Communicate to the applicant, in relation to the request for access to information on public aid and/or benefits by degree of recognized disability of Ms. (...), said request has been forwarded to the competent Department of Public Finance to collect the information within the scope of the Administration of the Generalitat of Catalonia. This department will communicate the answer directly to the applicant."

3. On February 20, 2022, the citizen files a claim with the GAIP against the tax administration for denying access to the requested public information.

4. On February 25, 2022, the GAIP informs the citizen that it has ex officio split its claim into two separate files ((...)), in consideration of the different information requested.

The claim, the subject of this report, refers to the request for information on public aid and the benefits linked to the recognition of the degree of disability that could have been perceived or corresponded to the applicant's mother, who be referred to the competent Department of Public Finance of the Generalitat of Catalonia.

5. On February 25, 2022, the GAIP forwards the claim to the aforementioned Department, informing it of the processing of the mediation procedure at the express request of the complaining party, and requiring it to issue a report on which they base their positions, as well as the complete file relating to the request for access to public information, the identification of the third parties who are affected by the requested access, as well as the person or persons who will represent at the mediation session.

6. On March 21, 2022, the Department responds to the GAIP's request by sending the complete file of the request for access to public information.

The file contains a copy of the communication of February 7, 2022 issued by the head of the Cabinet Technical letter addressed to the applicant, in which the following is reported:

"Once transferred to the different departments of the Generalitat de Catalunya, the Department (...) indicates that Ms. (...) the degree of disability was not recognized, but the dependency situation was recognized from the year 2012 until his death on 11/12/2014, with the right to the economic benefit for non-professional carer and day center service (file (...)). To be able to access this file, guarded by the Department (...), it would be necessary to provide a certificate of last will or testament to verify that there is no limitation on access to personal data."

Likewise, the GAIP is informed that the Department is not aware of the existence of any third party affected by the access that is being claimed.

7. On March 22, 2022, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Authority of Data Protection, the APDCA is the independent body whose purpose is to guarantee, in

the scope of the powers of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of the LTC, which regulates the claim against resolutions regarding access to public information, establishes that if the refusal has been based on data protection 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 (article 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/EC (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 Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (RGPD) considers "«tratamiento »: 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, suppression 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".

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 it can only be considered based on this legal basis of article 6.1.c) of the RGPD when this is 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 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."

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC recognizes the right of people 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 person" (section 1).

Article 2.b) of the LTC defines "public information" as "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".

For its part, article 53.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), specifies that it is public information subject to the right of access "all the information, any data or documents that the public administrations have prepared, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."

The right to public information, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account what is established in articles 23 and 24 of the LTC, as well as the principles of the personal data protection regulations.

III

This claim is lodged against the denial of access and obtaining a copy of the information relating to public aid and also to the benefits due to a recognized disability that could have been received or corresponded to the deceased mother of the person making the claim, with indication of the amount received for these concepts by months and/or days.

As has been made clear in the background of this report, the Department would have informed the person claiming that his mother had not recognized the degree of disability, so she did not receive any public aid for this concept. Therefore, it is necessary to understand your request satisfied in this end.

In this same communication, the Department informs the claimant that his mother had a recognized dependency situation from 2012 until her death on December 11, 2014, with the right to the financial benefit for non-professional carer and the day center service. However, the file does not state that he was given information about the amounts received for this concept.

The Department also informs him, in said communication, that the file for recognition of the dependency situation referred to his mother is in the possession of the Department (...) and that, in order to access it, it would be necessary to provision of a certificate of last will or testament, in order to check that there is no limitation in access to personal data.

Despite this information that the Department provides to the claimant about the possibility of accessing the file recognizing the dependency status of his mother, given the terms of the request for information, the object of this report is exclusively to analyze the claimant's access to information on the amounts of public aid that his mother could have received following the recognition of her dependent situation.

IV

In the present case, it is pointed out that the claimant's deceased mother had a recognized dependency status to a degree that entitled her to the financial allowance for non-professional carer and the day center service.

In the framework of Law 39/2006, of 14 December, on the promotion of personal autonomy and care for people in a situation of dependency, the financial benefit for care in the family environment and support for caregivers (article 14.4) is an economic benefit, of an exceptional nature, which is established in the Individual Care Plan (PIA) of the person in a situation of dependency with the consensus of the reference professional of the basic social services corresponding to him.

This benefit, as established by Law 39/2006, is determined based on the degree recognized for the person in a dependent situation and their economic capacity (article 18). Therefore, for the relevant purposes, it must be borne in mind that the beneficiary is the dependent person (not the carer), that is to say, in the present case, the deceased mother of the claimant.

Taking into account the circumstances of the specific case, it must be said that the data of dead people are not subject to protection by data protection regulations.

This is clear from Recital 27 of the RGPD, which provides that "this Regulation does not apply to the protection of personal data of deceased persons". However, this same recital adds that "the member states are competent to establish rules relating to the treatment of their personal data".

In the same sense, article 2.2.b) of the LOPDGDD is pronounced when it states that this Law is not applicable "to the data processing of deceased persons, without prejudice to what is established in article 3".

The aforementioned article 3 of the LOPDGDD provides the following:

"1. The **persons linked to the deceased for family** or de facto reasons as well as their heirs may contact the person responsible or in charge of the treatment for the purpose of **request access to their personal data** and, where applicable, their rectification or deletion.

As an exception, the persons referred to in the previous paragraph will **not be able to access the deceased's data**, nor request its rectification or deletion, **when the deceased person had expressly prohibited it or so established by law**.

Said prohibition will not affect the right of the heirs to access the property data of the deceased.

2. The persons or institutions to which the deceased had expressly designated for it may also request, according to the instructions received, access to his personal data and, where appropriate, their rectification or deletion.

By royal decree, the requirements and conditions will be established to certify the validity and validity of these mandates and instructions and, where appropriate, their registration.

3. (...)."

In the present case the claimant is the child of the deceased person to whom the requested public information refers. Therefore, and based on the provisions of the personal data protection regulations, attesting to his identity and the link with the owner of the data for family reasons (or de facto), or his status as heir of the deceased, could access his mother's data contained in the file regarding the amount he could have received due to the recognition of the financial benefit for care in the family environment and support for non-professional carers, unless record the mother's express opposition to this (article 3.1 LOPDGDD). The verification of these circumstances would correspond, in any case, to the person responsible for the treatment (article 4.7 RGPD), this is the Department (...).

It should also be noted that, from the perspective of transparency, the limit provided for in articles 23 and 24 of the LTC would not apply. Although these articles of the LTC do not distinguish about their applicability to living or deceased persons, it is clear that both precepts deploy the regulation of the limit to the right of access to public information derived from the right to the protection of personal data. Therefore, according to what has been exposed, it must be understood that they do not come into play when it comes to accessing data of deceased people.

This without prejudice to the possibility that access to the information of deceased persons is may be limited in the event that the information affects the privacy of the deceased person, as follows from Article 18 EC, Article 21.1.f) of the LTC, of Organic Law 1/1982, of 5 May, on civil protection of the right to honour, personal and family privacy and one's image and, in particular, of article 36 of Law 10/2001 of 13 July, on files and documents, according to which the limitation of access for the protection of the right to privacy persists until 25 years beyond the death, or 50 years from the date of the document if the date of death is unknown, but can be presumed - or is certain - that the person is dead.

Taking into account the terms of the access request, in which public information and documentation is requested about the amounts of public assistance received by the claimant's deceased mother, this information should not contain information of other people other than the mother, so it is not necessary to carry out a specific analysis of the impact on the right to the protection of personal data.

conclusion

The claimant can obtain information and a copy of the amounts received by his deceased mother for the recognition of the financial benefit for care in the family environment and support for non-professional carers, unless there is express opposition from the deceased to her child's access to her personal information.

Barcelona, April 7, 2022

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