

IAI 13/2022

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 access to the agenda of the Mayor, the first, second and third lieutenant of 'Mayor's office

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 access to the agenda of the Mayor, the first, second and third lieutenant of the Mayor from the month of September until now.

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 11, 2022, councilors request from a city council the following information in digital format:

- "1.- That he send me the documentation in digital format of the agenda of the Mayor, of the first, second and third Lieutenant Mayor (...) of the last 4 months.
- 2.- That I be told the people with whom he has met and a description of the reason for the meeting.
- 3.- That the requested data be anonymized according to GAIP resolution 556/2019, and according to legal basis number 2 of GAIP resolution 251/2021 of March 12."

2. On February 21, 2022, the city council sends the alderman the agendas of the three deputy mayors and the mayoress.

3. On February 22, 2022, the councilor submitted a claim to the GAIP against the city council in which he stated that:

"I am attached excel sheets with meeting days and types of meetings. But they do not tell me who they have met with (anonymizing if applicable) and there is no description of the reason for the meeting. In some cases it says "Company", "ICO", "Barri Rodes", but does not explain who intervened or why."

4. On February 25, 2022, 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 completed file to which it refers.

5. On March 11, 2022, the city council issues a report on the documentation it has handed over to the councilor regarding its request.

6. On March 24, 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

From the point of view of data protection regulations, it should be taken into account that article 4.2) of the RGPD defines data processing as: "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, 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 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."

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

According to article 18 of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal entity" (paragraph 1). The information on the agenda of the mayors and the deputy mayors, insofar as it is information related to the public activity of these people and which forms part of the information available to the city council, is public information to effects of article 2.b) of the LTC, and therefore remains subject to the right of access in the terms provided by the transparency legislation.

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

In this case, the person requesting access has the status of councilor of the corporation, and therefore, the assessment that can be made regarding the obligation to provide him or not with personal information of third parties must be 'examine taking into account the right of access that the local regime regulations attribute to councilors - that is, Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) and the revised Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28 (TRLMRLC).

It is therefore appropriate to analyze whether the aforementioned local regime regulations can constitute a legitimate basis for access to the information claimed by the councillor.

This without prejudice to the fact that the councilor who requests information must be granted at least the same guarantees regarding access to information as the rest of the citizens who do not have this condition of elected office, given the supplementary application of the LTC (additional provision first section 2).

III

As this Authority has decided on previous occasions (among others, reports IAI 48/2019, IAI 52/2019, IAI 3/2020, IAI 41/2020, IAI 27/202, IAI 36/ 2021, IAI 43/ 2021 or IAI 9/2022 which can be consulted on the website <http://apdcat.cat>), the local regime legislation recognizes a right of access to all elected officials, regardless of whether they are in the government team or in the opposition, to the information that their local corporation has and that may be necessary for the exercise of the functions that correspond to them.

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

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

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

It should be borne in mind that the elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis, study and information of the necessary antecedents, which have the services of the City Council, for their control task and to document themselves for the purposes of adopting decisions in the future (among others, STS of March 29, 2006).

However, this does not mean that this right of councilors is an absolute right. If it conflicts with other rights, it will be necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

This has come to be recognized by the local regime legislation itself. The mentioned article 164 of the TRLMRLC, in regulating the conditions for the exercise of the right of access to municipal information by the members of the corporations, establishes, as a possible basis for denying the request for information with reasons, that "the knowledge or the dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's image" (section 3, letter a)), but obviously access could also be denied, given the nature of the right to data protection (STC 292/2000), when, regardless of whether certain data can be considered intimate or not, there are other specific circumstances related to personal data that justify it, in particular under the protection of the principle of data minimization, according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed" (Article 5.1.c) of the RGPD)).

This principle implies, on the one hand, that access to municipal information that includes personal data, without the consent of those affected, must necessarily be linked to the exercise of the functions that correspond in each case to the councilor who it is treated, in the terms provided for in the local regime legislation. On the other hand, it involves a weighting exercise, in order to assess the implications that, in each case, the exercise of the councilors' right of access to information may have for the rights of the people affected, such as the right to the protection of personal data (Article 18.4 EC).

Local legislation does not require councilors to explain or justify the purpose of their request in order to access municipal information, given that according to repeated Supreme Court jurisprudence, the reason for their request is 'must be understood as implicit in the exercise of the control and inspection functions of the governing bodies of the corporation, as explained in article 22.2.a) of the LRBRL. Even so, in cases where there is information of a personal nature, knowing the reasons why access is of interest can be an important element to take into account when making a careful weighting between the right of access to the information of councilors and the right to data protection of the affected persons.

Taking into account that the claimant in this case is limited to requesting the information referring to his status as a councillor, it will be necessary to analyze the nature of the personal information that could be affected and the impact on the privacy of these people, and assess whether the alderman's access to this data could be necessary for the performance of the control and inspection functions of the governing bodies attributed to the aldermen.

Thus, at the outset, the disclosure of information about the participation in events or meetings of the Mayor or the lieutenants of the mayor's office that identify or allow the identification of the third persons attending would affect not only the mayoress or the lieutenants of the mayor's office, but also the personal sphere of these

third parties Therefore, it is not possible to assess the possibility of providing information about who met with the Mayor, without taking into account the right to data protection of these people.

IV

This Authority has had the opportunity to analyze councilors' access to the agendas of the mayor's office in the IAI report 46/2019 which can be consulted on the Authority's website www.apdcat.cat, whose conclusions are applicable to the claim that is now in our hands, and which can also be extended to the agendas of the mayor's lieutenants.

In the aforementioned report, three large groups of meetings are identified that can be included in the agenda of the mayor's office: a) meetings with other public officials, b) meetings with people considered by the LTC as interest groups, ic) meetings with people who would not have this consideration, held to deal with any matter, such as matters related to administrative files of municipal competence.

With regard to the meetings held with other public officials of the administration, it is to be expected that these meetings take place within the framework of the exercise of powers or functions attributed to the Mayor or the deputy mayors and the other office audience in question. Therefore, it is necessary to think that the object or the reasons for the meeting will be directly related to the public activity developed by these people.

The disclosure of said information would affect the professional or work sphere of these people. However, they are public servants, and as such they must anticipate that the actions they take in their ordinary activity may be subject to the scrutiny of the public. The privacy expectations of people who hold public positions with regard to the work or professional activities they carry out are not comparable to those that other people who act in the private sphere may have.

In this case it is a councilor who requests the information. The knowledge of public matters dealt with by the Mayor with these people can be relevant to the effects that he can keep track of what their actions have been in relation to a certain matter or matter during a certain period.

It must be taken into consideration, although it is not directly applicable to the case at hand, that article 24.1 LTC enables access to merely identifying information related to the public activity of the Administration, and that in this in this case it is a question of reporting on actions carried out in the exercise of public office functions.

For all that, the right to data protection of the affected public officials should not prevent the councilor's access to information about the matter discussed and the public official attending the meeting, including the name and surname of the person that occupies it

v

With regard to the meetings with natural persons considered as interest groups for the fact of carrying out "actions of active participation in public policies or in decision-making processes in Catalonia with the purpose of influencing the orientation of "these policies in defense of one's own interest or of third parties, or of a general interest" (Article 2. g) LTC), the legal regime provided for in the transparency legislation must be taken into account.

It should be remembered that Decree Law 1/2017, of February 14, which creates and regulates the Registry of Interest Groups of Catalonia, repeals article 45 LTC (second additional provision), and provides that this registry "acts as a register of interest groups of the Administration of the Generalitat, local bodies and public bodies referred to in article 3.1.bic of Law 19/2014, of December 29, on transparency, access to public information and good governance" (Section 1), and is organized and managed by the Administration of the Generalitat (Section 3).

According to the second additional provision of Decree Law 1/2017, section 1, local bodies, among others, can create their own registers of interest groups. Thus, the creation of an own register by local bodies is no longer mandatory, as required by article 45 LTC, repealed. Therefore, the regime established in the LTC regarding interest groups is applicable to the required municipality regardless of whether or not it has created its own register of interest groups.

Article 47.1 LTC provides that they must be registered in the Register of Interest Groups:

"a) The people and organizations that, regardless of their form or legal status, in their own interest, that of other people or organizations carry out activities likely to influence the drafting of laws, rules with the rank of law or general provisions or in the preparation and application of public policies.

b) Platforms, networks or other forms of collective activity that, despite not having legal personality, constitute a de facto source of organized influence and carry out activities included in the scope of application of the Register."

Section 2, of this same precept states that "the scope of application of the Register includes all activities carried out with the purpose of directly or indirectly influencing the processes of elaboration or application of policies and the decision-making, regardless of the channel or medium used, including contacts with authorities and public officials, deputies, officials and staff at the service of the institutions, and also voluntary contributions and participation in official consultations on legislative proposals, regulations, legal acts or other inquiries."

The range of people and entities that can act as interest groups is wide. Article 13 of Decree 171/2015 classifies them in several categories according to the sectors in which they operate: Consulting and advice sector (professional consultancies, collective offices, sole proprietorships); business and association-based sector (companies and groups of companies, corporations under public law, professional, business and trade union associations), other organizations (entities organizing events, foundations and associations, platforms and networks, ad hoc coalitions, temporary structures and other forms of collective, non-profit activity,

entities representing churches and religious communities, etc.).

The Register must include, among other information, a list, ordered by category, of people and organizations that act with the purpose of influencing the development and application of public policies, and their headquarters organization." (article 49.1. a) LTC), and **must publicize the actions of the interest groups, especially the meetings and hearings held with authorities, public officials, elected members or deputies**, and the communications, reports and other contributions in relation to the matters dealt with (article 49. 2 LTC).

The same transparency law expressly provides that the information regarding those people considered as interest groups is accessible to citizens through the Register created for the purpose, and where all the natural or legal persons, or other groups that the Law considers as such, as well as all activities of direct or indirect influence carried out by these interest groups (Article 50 a) LTC).

Therefore, in these cases, the Law prevails over the public interest in the knowledge of said information over the right to privacy of the persons affected, and expressly provides that the persons who apply for registration in the Register have the obligation as declarants, to accept that the information provided is made public.

In addition, according to article 33.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information:

"1. The information relating to the senior positions of the public administrations and the management staff of the following public sector entities **must be made public**, with identification of the name, surname and position, and on a monthly basis:

a) **The public agendas with regard to the contacts and meetings held with the interest groups**, in the terms and with the requirements that are defined in the current regulations governing the interest groups.

In any case, this information must contain the date of the meeting, the name of the interest group, **and the person or persons acting on its behalf** and the object of the meeting with sufficient precision to know the main content."

From all this, it follows that in relation to events or meetings held with people who can be considered interest groups in the terms provided for in article 47 LTC, to the extent that their publicity through the Registry is already planned of interest groups, there must be no inconvenience in providing any citizen, through the exercise of the right of access, information on the activity of natural persons who would have acted as such, including in the case of legal entities, the identity of the person or persons who represents them in the meetings held with the mayor or the first deputy mayor.

Therefore, in the case at hand, given the condition of the claimant's councillor, with more reason the weighting must be in favor of access to this information referring to the people considered as interest groups.

VI

Finally, access to information about meetings with other people (apart from meetings with entities or people that can be considered interest groups) is analyzed to deal with any matter that affects or interests them.

This would include, among others, the activities referred to in Articles 48 LTC and 7.3 of Decree 171/2015, expressly excluded from the Register of Interest Groups, that is "related to the provision of legal advice or professional directly linked to defending the interests affected by administrative procedures, those intended to inform a client about a general legal situation, conciliation or mediation activities carried out within the framework of the law, or advisory activities carried out for informational purposes for the exercise of rights or initiatives established by the legal system." and, in general, the meetings held with citizens to deal with matters related to administrative files of a different nature that the City Council may be processing.

The fact that the LTC excludes this type of actions from registration in the Register of Interest Groups and, therefore, from the obligation to publicize these meetings, does not imply that in certain cases it cannot be justified to provide a councillor with information about the people who could have met with the Mayor as part of actions specific to a certain administrative procedure through the exercise of the right of access.

In this case, however, indiscriminate access is requested to the meetings held by the Mayor and the deputy mayors in a certain period of time without specifying any other purpose than the exercise of their functions as a councillor. In fact, in his claim he states that the information provided to him by the city council does not include information about the topics discussed at the meetings or the people who met, specifying that this information can be anonymous in any case necessary

In any case, it must be remembered that legal entities are excluded from the scope of protection of the data protection regulations, as specified by the GDPR itself, by establishing that "(...). This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details. (Recital 14). Therefore, from the perspective of the right to data protection, there should be no impediment to providing the councillor with information on the name of the legal persons or entities with which the Mayor or the

deputy mayors have been able to hold meetings, regardless of whether or not they should be considered interest groups.

Having said that, the assessment that needs to be made is with respect to access to information about the physical persons attending the meetings, in the name and representation of these legal persons (companies, entities, associations, etc.), and about the persons physical persons attending events or meetings in their own name. Since the impact on people's privacy is different, it is necessary to distinguish one from the other assumption

With regard to the meetings held with people who act on behalf and representation of legal entities, it should be borne in mind that providing information about their identity would in principle affect the professional or work sphere of these people.

Despite this, it cannot be ruled out that knowledge of the participation of certain people in these events or meetings may end up revealing data included in the special category of data referred to in Article 9 of the RGPD. This could happen, for example, in the event that the meeting was held with representatives of a trade union, of a political party, with members or representatives of a religious denomination, with representatives of associations of patients with some particular disease or of people suffering from disabilities, or with representatives of groups of a particular sexual orientation, etc.. In these cases, the information would have to be given without identifying the people involved, which could be done by facilitating exclusively the reference of the entity, association or collective in question, unless it has the express consent of the interested parties or it is data made manifestly public by the interested parties themselves (cases provided for in article 9.2 a) and i) of the RGPD). However, regarding the consent of the interested parties, the provisions of article 9.1 must be taken into consideration. of LOPDGDD, which provides that "the mere consent of the affected person is not sufficient to lift the ban on the processing of data whose main purpose is to identify their ideology, trade union affiliation, religion, sexual orientation, beliefs or racial or ethnic origin".

Beyond these cases, it should be borne in mind that the scope of municipal jurisdiction is broad and can affect matters of a very diverse nature. Thus it could be matters related to contractual, urban planning, subsidy activity, or even with sanctioning files maintained with the Administration. Therefore, among these people there may be positions from the same companies or entities, but there could also be lawyers or external advisers hired by companies to solve a specific file.

The truth is that, in order to carry out a control and inspection of the actions of the Mayor through access to her agenda, it seems that it could be sufficient to know what the society or entity is and the matter or the reason for the meeting. The legal person is the one who must be considered interested in these cases. With this information it is now possible to make an assessment of the matters or files in which the Mayor has intervened in recent months, and in accordance with the principle of minimization it does not seem necessary to include the name and surname of the person in this list concrete that attends.

All this, without ruling out that once this list has been obtained it may be relevant in certain cases to know who is the person who has met with the Mayor to deal with a specific matter on behalf and on behalf of the legal entities affected. Assumption that could force a different weighting.

With regard to access to information about the Mayor's meetings with natural persons acting in their own name, it should be borne in mind that providing information about who these persons are and the reasons for the meeting would imply an interference in the privacy of the participants which will affect to a greater or lesser degree depending on the matter in question.

In this sense, within the variety of specific matters or files, it cannot be ruled out that the information may reveal data included in the special category of data of Article 9 RGPD (e.g. a meeting held in the context of a grant file in disabled people), or referred to the commission of administrative infractions as it is a disciplinary file.

Be that as it may, in this case a generalized and indiscriminate access is being requested to all the meetings held by the Mayor in order to exercise the functions attributed to the councilor

and without specifying specific reasons to justify the invasion of privacy that the councilor's access to the identity of all the people, probably residents of the municipality, who had met privately with the Mayor during the last months would mean. And it doesn't seem that it should fall within the expectations of the person who deals with the administration in this context, that the reason for their meeting should be communicated to third parties through the right of access.

In fact, the councilor himself assumes that information can be provided to him while maintaining the anonymity of natural persons who, in their own interest and representation, have met with the Mayor in a private capacity to discuss matters related to specific administrative files. Thus the councilor states in his writings that "I do not want to know the personal data and the reasons that have as their object a personal matter; what I ask is that a brief description of the reason for the meeting be given if it is the subject of municipal affairs and not of personal matters". Therefore, it does not appear that he may have a specific interest in obtaining said information.

For all this, and in application of the minimization principle, it would be necessary to provide information on this type of meeting in an anonymized manner.

Point out that in order for anonymization to be considered sufficient for the purposes of data protection legislation, it is necessary to ensure that the information provided cannot be related to an identified or identifiable natural person. In this sense, it would be necessary to remove from the requested list, not only the names and surnames of the people who have held these meetings, but also that information about the file or matter that motivates it that may relate directly or indirectly to the affected person

conclusion

The data protection regulations would not prevent access to information about meetings held by the Mayor and, where applicable, the deputy mayors; with other public positions, specifying the position and the reasons for the meeting. Nor would it prevent access to the meetings held within the framework of the actions of the people considered as interest groups for the purposes of the transparency legislation, including in the case of legal persons, the identity of the natural person who represents them.

The information on the acts or meetings held with third-party natural persons acting on behalf and representation of legal persons, for purposes other than those of the interest groups, should be provided omitting the identity of the specific person who represents them .

Information about meetings held with third-party natural persons acting on their own behalf should be provided in an anonymized manner.

Barcelona, April 7, 2022