



Autoritat Catalana de Protecció de Dades

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to the claim submitted by a citizen against a body in the field of public health for the denial of access to information on inspections carried out at food establishments in the years 2017 to 2021

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 Complaint presented by a citizen against a body in the field of health public (hereinafter, the body), for the denial of access to information on the inspections of the claimed body, to food establishments in the years 2017, 2018, 2019, 2020 and 2021 (ordered by year).

After analyzing 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, the following report is issued.

Background

1. On February 3, 2022, a citizen submits a request to the Department of Health, which it would have sent to the organization on February 9, 2022, according to the file, in which it requests access to the information of the *"Health inspections of activities and food establishments in the city of ..."*.

Specifically, the applicant requests:

"Spreadsheet listing activities and food establishments inspected (with their name and address) by (the body) in the years 2017, 2018, 2019, 2020 and 2021 (ordered by year) in (the city of ...) with specification of the type of activity or establishment inspected (bar, hospital, restaurant, school, elderly) and whether it has passed of favorably or, if otherwise, failed the inspection.

It should also be specified in other columns why the inspection was not passed in each case (sanitary authorizations or records not up to date handling that is not hygienic enough/food products in bad condition/inadequate product self-control systems) inspected (if there has been a penalty, closure of the establishment or the measure that has been applied in each case).

Explanation of the operation of the scoring system on the basis of which the inspection is passed or not passed."

2. The file contains the organization's resolution of March 9, 2022, in response to the applicant, in which it is decided to partially approve the request, specifically, it is agreed to facilitate

the list of inspections carried out during the requested period, which includes the data relating to the establishment code, the type of establishment, the type of control carried out and the date, reason and result of the inspection, as well as *"failure the request in the terms of detail that is proposed, since it allows the identification of the owners of the activities and may affect their economic and commercial interests."*

3. The file contains a copy of the body's report dated April 12, 2022, sent to the GAIP, in which it is reiterated the impossibility of providing the company name or name of the establishment and the domicile of the activity.

4. On March 17, 2022, the applicant filed a complaint with the GAIP, in which he stated that he had not been provided with the requested information, and that: ***"(...) I have not been provided the name of the establishments/businesses or the address of those that have been inspected, as I requested, under the protection of data. However, I am asking for the name of businesses, establishments and not people. (...)"*** The claimant adds a reference to a press article from that newspaper.

5. On March 22, 2022, the GAIP informs the organization of the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to public information, and the identification of the third parties affected by the access that is claimed, if any.

6. On April 20, 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 governance, in relation to the claim presented.

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 issue a report to 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 data

personal data and the free circulation of this data and which repeals Directive 95/46/CE (RGPD).

Therefore, any other limit or aspect is beyond the scope of this report affect the personal data contained in the requested information, such as case of the limit established in article 21.1.b) of the LTC, relating to the investigation or sanction of criminal, administrative or disciplinary infractions whose application could lead to the claimant's right of access must be denied or restricted for the purposes of protect research.

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 *"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.

For its part, article 86 of the RGPD provides that *"the personal data of documents officials 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, body or entity in accordance with the Law of the Union or of the 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 government (henceforth, 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".

The information related to the inspections that the body has carried out in food establishments in the period indicated (2017 to 2021), to which the person making the claim refers, is public information for the purposes of article 2.b) of the LTC and therefore remains subject to the right of access (article 18 LTC).

This right, 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 the limitations and criteria provided for in the transparency legislation (articles 23 and 24 LTC).

III

As set out in the body's report, dated April 12, issued at the request of the GAIP, this would have decided to give the person claiming the following information:

"(...) the list of inspections carried out during the requested period (years 2017, 2018, 2019, 2020 and 2021, these last 2 years can also be extracted from the transparency portal of the organization's website..), and which includes the following data:

- **The Establishment Code**, which is an identification number used in (the organization's) records and which is maintained over time, regardless of name and/or owner changes. The Agency does not include the commercial name or denomination because it is not a field required by the database and does not record the history of changes; in such a way that it does not allow to ensure the commercial name at the time of the inspection. However, the district number is integrated.

- Regarding the **type of establishment**, the information system used groups them by the following sectors: commercial catering, retail trade, school canteen, hospital, social catering, and center for the elderly. Likewise, the detail of the activity is incorporated.

- **The extraction is done for each type of control carried out during the inspection:** authorizations and records; structures and equipment (physical conditions/ maintenance, cleaning); processing and handling; product (physical conditions, labelling, origin/traceability); and, self-controls.

- **Inspection date, reason and result of each inspection** (no deficiencies; rectification request; administrative request and coercive fine; activity cessation; product destruction; product shutdown/immobilization; market withdrawal; supplier return; proposed penalty and termination; proposed sanctioning body; request for documentation).

And, in relation to the explanation of the operation of the scoring system on the basis of which the inspection is passed or not passed, it was reported that there are no parameters of quantification or cataloging based on the result of each one."

On the contrary, as can be seen from the body's resolution of March 9, 2022, and from the report sent to the GAIP, the body would have denied the request for access to the name and address of the 'activity, "given that it is incompatible with the provisions mentioned in articles 23 and 24 of Law 19/2014, since they would allow to indirectly identify the natural persons holding these."

Given the response of the administration complained of, the person making the claim considers the information provided to him insufficient, and reiterates his request to know this information (name of the establishments and businesses, and the address of those that have been inspected), without specify the reasons why you want to know this information in particular. This, without prejudice to the information that would have already been provided to him, according to the information available.

According to the statutes of the claimed body, it is responsible for the provision of different services, among others: "e) Food safety and hygiene, covering the sanitary control of the distribution and supply of food and beverages and other products directly or indirectly related to human consumption, (...)." *File Insiste*

Taking into account the terms in which the claim is formulated, the requested access would affect information on hygiene and sanitary inspections carried out in different types of restaurant establishments, which may be related to violations of the corresponding regulations, and which would have been to be completed in a period of time from 2017 to 2021.

Article 23 of the LTC establishes that:

*"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."*

In the same sense, article 15.1, second paragraph, of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), establishes that:

*"If the information includes personal data that refers to racial origin, health or sex life, includes genetic or biometric **data or contains data related to the commission of criminal or administrative offenses** that do not lead to a public reprimand to the offender, access it can only be authorized if there is the express consent of the person affected or if the latter is protected by a rule with the status of law."*

These precepts exclude the possibility of accessing information related to the commission of criminal or administrative infractions, unless the sanction or penalty involves a public warning to the offender or the express consent of the affected party is the moment of formulating the request.

To this it must be added that the RGPD extends its scope of protection to personal data understood as all information about an identified or identifiable natural person (article 4.1).

Recital 14 of the RGPD establishes the following:

"The protection granted by this Regulation must apply to natural persons, regardless of their nationality or place of residence, in relation to the processing of their personal data. 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.

Taking into account these forecasts, the limit of article 23 of the LTC - or article 15 of the LT would not apply in the cases in which the owners of the premises or establishments inspected by the body on the which information is requested are legal entities, to the extent that they are not holders of the right to the protection of personal data. Therefore, for the purposes of this report, the data protection regulations would not be an impediment to being able to provide the claimant with the requested information relating to legal entities.

However, the limitation of article 23 LTC **is applicable in relation to information that allows the direct or indirect identification of natural persons** affected, including individual entrepreneurs and liberal professionals owners of establishments or premises of restoration that have been inspected, if applicable, following a complaint, and that have been sanctioned.

IV

As can be seen from the file, in the information that would have already been given to the claimant it is indicated as a reason for the inspection, among others, that a complaint/irregularity has occurred; in other cases, the reason is given as: "office/campaigns/programmes", that is to say, it seems that some inspections could be due to information campaigns or inspection plans of the claimed Administration itself, and not to the prior complaint of irregularities, given the available information. Likewise, as a result of the body's intervention, the proposed sanction, cessation of activity, or the requirement for remediation is indicated in several cases; in other cases it is indicated that no deficiencies are detected.

The organization's resolution, dated March 9, 2022, states that *"providing the required information in the detail requested allows the identification of the owners of the activities and may affect their economic and commercial interests."*

For the purposes of interest in this report, in the case of individual entrepreneurs, in line with the criterion supported by the Authority (reports IAI 45/2019, IAI 8/2020, IAI 17/2020, or IAI 20/2020, among others), it is necessary to agree that, although it is true that information related to violations committed in the context of professional or commercial activity may in principle affect the interests commercial and economic of the holder, divulge

this type of information can also have harmful effects that go beyond the strictly business sphere.

Thus, reporting on the alleged violations committed by these natural persons or, where applicable, on the sanctions imposed, may affect not only their personal patrimonial sphere, in the event that they are sanctioned, but may even affect its prestige or its social image - remember that the infringer or alleged infringer would be the entrepreneur or owner of the business, regardless of the commercial name that the establishment may use -, for facts for which responsibility is attributed to him even before it has been effectively sanctioned administratively or judicially, in the event that the procedure has not ended.

In addition, articles 23 of the LTC and 15.1 of the LT do not establish any type of distinction in relation to the limitations of access to information relating to the commission of criminal or administrative offenses by individual entrepreneurs, and this means that the privacy expectations of these people regarding the possibility of third parties accessing this information are exactly the same as those that other people may have.

v

In the case at hand, the person making the claim does not directly request the name of the natural persons who own the establishments inspected and, where appropriate, sanctioned (information that would allow the direct identification of those affected). In fact, in his complaint to the GAIP, dated March 17, 2022, he makes it clear that he wants to know *"the name of businesses, establishments and not people."*

However, as has been pointed out, it is clear that the information, in the terms requested, may affect the right to the protection of personal data, insofar as the information requested allow these people to be identified indirectly. Although the identification of natural persons is done indirectly, as has also been made clear, the data protection regulations are fully applied, and the access limitations provided for in the transparency regulations are also applicable.

From the perspective of data protection regulations, as set out in Recital 26 of the RGPD:

"To determine whether a natural person is identifiable, all means, such as identification, that can reasonably be used by the data controller or any other person to directly or indirectly identify the natural person must be taken into account. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment like technological advances."

And, remember, article 4.1 of the RGPD provides that:

"An identifiable natural person will be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier,

como por ejemplo a number, an identification number, location data, an online identifier or one or several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person."

Therefore, it is clear that the data protection regulations apply not only with respect to the information of directly identified persons, but also with respect to those persons who may be indirectly identifiable, as could be the case that we occupy

It is clear that the detail of the information requested by the person making the claim regarding the inspections carried out by the body, in particular, the information referring to the name and address of the businesses or establishments that have been inspected in the indicated period, would allow the indirect identification of the natural persons who own the establishments, without disproportionate efforts.

In addition, it should be noted that the inspection actions where infringements have been detected are carried out in premises or establishments where commercial activities are carried out, but could also, in some cases, coincide with private residences (as could be the case, for example, of some of the inspected establishments that are "seniors' centers", which can be the home of both the residents themselves and carers and/or owners of the centers). Likewise, the claimant requests to know the name and address of establishments inspected over an extensive period (five full years), which could mean the indirect identification of a large number of natural persons affected, an element that must also be taken into account from the perspective of data protection.

On the other hand, it should be borne in mind that the information on the inspections carried out in which allegedly irregular conduct has been detected may be information that has not yet given rise to a disciplinary procedure. The fact that, at the time the inspection report is drawn up, the commission of any infringement has not yet been declared and that the procedure for sanctioning has not been initiated, does not prevent the full application of the limit provided for in article 23 of the LTC.

As this Authority has so far held, Article 23 LTC does not refer to the need for a penalty to have already been imposed, or even for the commission of an offense to have been formally and definitively declared, but rather refers to personal data "(...) relating to the commission of criminal or administrative offences".

Taking into account in the case at hand the information that would have already been provided to the person making the claim, it is clear that providing the name and address of the establishments would allow the physical persons affected to be identified, including individual entrepreneurs and liberal professionals owners of the premises processed and/or sanctioned, without disproportionate efforts and, therefore, it is necessary to apply the limit of Article 23 LTC to the case at hand.

In conclusion, the data protection regulations do not allow access to the name and address of the establishments where inspection actions have been carried out by the body in the period indicated, in respect of which the commission of an infringement or that have been sanctioned, since this would allow to identify indirectly and without disproportionate efforts the natural persons holding them (including individual entrepreneurs).

Certainly, in the case of establishments that have not been reported or sanctioned (because have not been the subject of any inspection or because, once the inspection was carried out at the initiative of the claimed Administration itself - such as cases of carrying out ex officio information campaigns or inspection plans - it was found that they had not committed any infringement), in principle they would be outside the limitation established in article 23.

However, it should be borne in mind that a list identifying the establishments that have not been reported or in which no infringement has been detected, together with information on the rest of the establishments that have not been the subject of any inspection, could allow deduct, by exclusion, the establishments that have been reported and/or sanctioned. For this reason, from the point of view of the right to data protection, in a case like the one we are dealing with, a limitation of access such as the one made by the organization when delivering the information is fully justified.

conclusion

The data protection regulations are not an impediment to being able to provide the claimant with the requested information referring to legal entities.

The data protection regulations do not allow access to the name and address of the establishments where inspection actions have been carried out by the claimed body in the period indicated, in respect of which the commission of an offense has been reported or the commission of an offense has been ascertained, so the name and address of the establishments must be excluded from access.

Barcelona, May 12, 2022