

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 filed against a city council for denying access to information related to the incident that occurred during the Cavalcade of Kings

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 filed against a City Council for denying access to information related to the incident that occurred during the Cavalcade of Kings in which one of the participating horses died.

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 January 24, 2022, an animal rights organization wrote to a town hall in which, following knowledge of the sudden death of one of the horses participating in the Cavalcade of Kings, it requests the following information:

I.- If the cavalcade had all the corresponding permits.

II.- Give us a transfer of the permits he had.

III.- Let us know which entity organized the cavalcade.

IV.- Let us know if the cavalcade had a veterinarian present and the name of the doctor.

V.- Let us know if the necropsy of the animal was carried out and, if so, let us know the result.

VI.- Let us know from when animals are counted in the cavalcade and if, taking into account the events, it will be stopped.

VII.- Let us know if an investigation of the facts has been carried out and the result thereof.

VIII.- Let us know if disciplinary proceedings have been initiated against the owner of the animal.

IX.- Give us a copy of the veterinary report indicating that the animal died of a heart attack.

X.- Indicate if any other horse was injured during the ride."

2. On March 14, 2022, the entity files a claim with the GAIP against the City Council for denying access to the requested public information.

3. On March 21, 2022, the GAIP will send the claim to the City Council, requiring it to issue a report on which to base its positions, as well as the complete file

relating to the request for access to public information and the identification of third parties affected by the requested access.

4. On April 26, 2022, the GAIP reiterates the requirement for the above-mentioned documentation to the City Council, without, at the date of issue of this report, being aware that the City Council has sent the required information.

5. On April 28, 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

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 the LTC, which regulates the complaint against resolutions regarding access to public information, establishes that if the refusal is based on the protection of personal data, the Commission must request 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 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 drawn up, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."

Point out that, despite the GAIP request addressed to the City Council on March 21, 2022, and reiterated on April 26, 2022, there is no copy of the file followed by the City Council in relation to the access request that is subject of this claim. Therefore, the reasons why the City Council has not provided the requested information to the complaining entity are not recorded.

In any case, the disputed information, if it is in the possession of the City Council, is information public pursuant to article 2.b) of the LTC and, therefore, remains subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 et seq. LTC).

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

As stated in point 1 of the antecedents of this report, the claimant entity requests from the City Council various information related to the incident that occurred during the Cavalcade of Kings in the municipality in which one of the participating horses suddenly. Specifically, request the following information:

- I.- If the cavalcade had all the corresponding permits.*
- II.- Give us a transfer of the permits he had.*
- III.- Let us know which entity organized the cavalcade.*
- IV.- Let us know if the cavalcade had a veterinarian present and the name of the doctor.*
- V.- Let us know if the necropsy of the animal was carried out and, if so, let us know the result.*
- VI.- Let us know from when animals are counted in the cavalcade and if, taking into account the events, it will be stopped.*
- VII.- Let us know if an investigation of the facts has been carried out and the result thereof.*
- VIII.- Let us know if disciplinary proceedings have been initiated against the owner of the animal.*
- IX.- Give us a copy of the veterinary report indicating that the animal died of a heart attack.*
- X.- Indicate if any other horse was injured during the ride."*

The RGPD defines personal data as "all information about a **natural person** identified or identifiable ("the interested party"). Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, data of location, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person" (article 4.1)).

In turn, it provides that *"the protection granted by this Regulation must apply to natural persons, regardless of their nationality or place of residence, in relation to the treatment 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"* (consideration 14 RGPD).

It should be noted that, according to the City Council's website, the organization of the Cavalcade of Kings referred to by the claimant entity corresponded to a cultural association (...) with the collaboration of the City Council itself.

In view of this, it must be said that most of the public information requested in the present case does not contain personal data, so there would be no problem in handing it over to the claimant entity, given that the regulations for the protection of data would not be applicable in these cases. We refer specifically to the following information:

- If the cavalcade had all the corresponding permits (point I).
- Give them the transfer of the permits they had (point II), without prejudice to the considerations made in legal basis IV of this report.
- They should be informed of which entity organized the cavalcade (point III).
- They should be informed if the cavalcade had a veterinarian present (point IV).
- Let them know if the animal's necropsy was carried out and, if so, let us know the result (point V).

- They should be informed from when there are animals in the cavalcade and if taking into account the events will be canceled (point VI).
- They are informed whether an investigation of the facts has been carried out (point VII) and whether a sanctioning case has been initiated (point VIII), without prejudice to the considerations made in the legal basis VI of this report.
- Indicate if any other horse was injured during the ride (point X).

The rest of the public information requested contains or may contain personal data under the terms of article 4.1) of the RGPD, so it is necessary to examine whether the fundamental right to the protection of personal data of those potentially affected would justify or not a limitation of the claimant entity's right of access to said information, in accordance with what is established in articles 23 and 24 of the LTC and article 15 of Law 19/2013, of December 9, of transparency, access to public information and good governance (LT).

Article 23 of the LTC states 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 sex 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 to it by means of a written document that must accompany the request."*

In similar terms, article 15.1 of the LT, in its wording given by the eleventh final provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), has the following:

"1. If the requested information contained personal data that revealed ideology, trade union affiliation, religion or beliefs, access could only be authorized in

if the express and written consent of the affected person is counted, unless said affected person had made the data manifestly public before access was requested.

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 did not lead to a public reprimand to the offender, access only it may be authorized if the express consent of the affected person is counted or if the latter is covered by a rule with the force of law."

And article 24 of the LTC provides the following:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

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

IV

The complaining entity requests the City Council to "give us the transfer of the permits with which" the organization of the cavalcade had (point II).

According to Law 11/2009, of July 6, on the administrative regulation of public shows and recreational activities, "public shows and recreational activities of an extraordinary nature are those that are carried out sporadically in establishments open to the public that have a license or authorization for an activity different from the one intended to be carried out, or in spaces open to the public or other premises that, despite not having the status of establishments open to the public with a license or authorization, meet the conditions required by to carry out shows or activities" (article 42.1).

Public shows of an extraordinary nature are considered, among others, festive manifestations of a cultural and traditional nature, such as parades or parades of a popular, traditional or any other nature (Annex I, section II.2.e) of Regulation of public shows and recreational activities, approved by Decree 112/2010, of August 31).

Article 42.2 of Law 11/2009 establishes that extraordinary public events "are subject to the authorization of the Generalitat, unless they are carried out

in municipalities with more than 50,000 inhabitants or that are carried out on the occasion of festivals and popular fairs. In these cases, they are subject to a municipal license."

For its part, the municipal ordinance for the use of public roads and other public property, available on the City Council's website, provides that *"in cases where the requested activity is of public interest, 'occupation authorization for special or private uses can be granted by agreement between the City Council and the holder or holders thereof. The agreement can also provide for the exemption or bonus of the fee or the corresponding employment rights, as well as the general conditions to which the authorized activity is subject and the commitments that the license holder achieves "* (article 42).

In accordance with the aforementioned precepts, the organization of an event such as the Cavalcade of Kings requires a municipal license or the signing of an agreement. Therefore, the City Council should have granted this license or signed the corresponding agreement, which undoubtedly constitutes public information.

It is unknown in the present case which of the two options would have been adopted, which forces us to examine the two possible scenarios.

In the event that the authorization of the event has been carried out by means of a municipal licence, it must be borne in mind that this will only contain the identification of the authorized entity.

Bearing in mind that in the present case it is a cultural association and that, as pointed out in the legal basis III of this report, the information relating to legal persons is excluded from the scope of protection of the data protection regulations, in accordance with the personal data protection regulations there would be no inconvenience in providing the claiming entity with this information and, therefore, the municipal license.

However, in the event that the authorization of the event has been carried out through the signing of an agreement between the association and the City Council, it must be borne in mind that this public information will contain the identification of the natural persons acting on behalf of both parties.

For the purposes of the weighting required by article 24.2 of the LTC, transcribed above, it is particularly necessary to take into consideration that collaboration agreements must be published for transparency purposes, as provided for in articles 8.1.f) and 14 of the LTC.

Also that it is the LTC itself that establishes the minimum content that must be disseminated (article 14.2), limiting it, with regard to personal data, to information about *"the parties that sign them"* (letter a)), which, for the purposes of article 5.1.c) of the RGPD, should cover only the identification of the persons acting on behalf of these parties.

This is, in fact, contained in article 44.1 of the RLTC, which provides that *"for the purposes of letters a) and b) of article 14.2 of Law 19/2014, of December 29, it must publish a list of current agreements and their eventual modifications, which must include a link to the text of the signed agreement or its modification, after anonymization of the personal data other than the identification with first and last names of the signatories (...)"*.

To the extent that this information must be available to anyone, there would be no problem with it also being provided through the right of access when requested.

In addition, with regard to the merely identifying data of the public employee or public office acting on behalf of the City Council in the signing of the collaboration agreement, access to this information, under the terms of the article 70.2 of the RLTC, would also be enabled by the provisions of article 24.1 of the LTC, for identifying information directly related to the organization, operation or public activity of the City Council. This, unless, exceptionally, in a specific case the protection of personal data or other constitutionally protected rights must prevail.

In this sense, point out that the submitted file does not contain reasons or circumstances from which it can be appreciated that in this case the right to the protection of the data of those affected, or another constitutionally protected right, must prevail over the right of access of the claimant entity, to the extent that personal circumstances justifying it are not proven.

Therefore, in the absence of having the allegations that the affected persons could have formulated - to whom the request and/or claim should have been forwarded in accordance with articles 31 and 42 of the LTC-, it is necessary to recognize the right of the claiming entity to access this type of identifying information.

For all that, it must be concluded that the claimant entity could accede to the collaboration agreement formalized between the cultural association and the City Council, if applicable.

V

The claimant entity also requests from the City Council "*the name of the doctor*" present in the cavalcade (point IV) and "*the veterinary report indicating that the animal died of a heart attack*" (point IX).

Access to this type of information available to the City Council requires a reasonable balance between the public interest in its disclosure and the rights of individuals affected, as provided in article 24.2 of the LTC.

According to article 18.2 of the LTC, the exercise of the right of access "*is not conditional on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of any rule*", although and that certainly knowing the purpose of the access can be an element that is taken into account when making the necessary weighting.

The claimant entity, which is constituted as a non-profit entity that contributes to general interests in the field of animal protection, bases its request for information, as stated in the claim letter, on a possible violation of animal protection legislation.

It should be noted that the organization of public shows of an extraordinary nature in which animals are used, as is the case under examination, apart from having the corresponding administrative authorization (municipal license or collaboration agreement), must to respect the applicable regulations on the welfare or protection of animals.

The Revised Text of the Animal Protection Law, approved by Legislative Decree 2/2008, of April 15 (TRLPA), provides that *"people who own and possess animals must keep them in good hygienic and sanitary conditions, welfare and safety, in accordance with the characteristics of each species"* (article 4.1).

In turn, it provides that *"competitions, sports activities with the participation of animals and other concentrations of live animals must comply with the regulations in force, especially those relating to hygienic, sanitary, protection and safety conditions for animals"* (article 7 TRLPA).

It should be noted that article 44.3.u) of the TRPLA qualifies as a serious infraction, among others, *"not giving animals the necessary veterinary attention to guarantee their health."*

For its part, Royal Decree 804/2011, of June 10, which regulates the zootechnical, sanitary and animal welfare management of equine farms and establishes the plan equine health, provides that *"in the case of concentrations of horses for contests or competitions or for recreational or cultural activities, they must, if the competent authority deems it necessary, have shower devices for horses and have access to veterinary assistance"* (article 4.3.h)).

Considering that in the present case one of the equids participating in the cavalcade died suddenly, it can be considered in the public interest to be able to know whether the act had all the relevant measures for the purpose of guaranteeing the well-being of this animal , as required by applicable regulations. In this sense, it may be of interest to know the identity of the doctor who, in the exercise of his professional activity, was responsible for offering the appropriate veterinary assistance to the horse, in terms of checking its state of health. Likewise, it would be of interest to be able to know, not only the report in which the circumstances and cause of the equid's death are collected and which would make it possible to establish whether or not the appropriate measures will be adopted to guarantee its well-being, but also the professional who prepares it in the exercise of their profession.

From the point of view of data protection, handing over this information would lead to an interference with the right to data protection of the affected doctors, given that it would allow to know not only their identity but also a certain action in relation to some controversial facts. But it should be borne in mind that it would in any case be about aspects linked to their professional activity and exercise of the profession as veterinarians, with which the effect on their personal life would be less. It should be borne in mind that the identity of the veterinarian acting in an event of this type will often be known by the owners of the participating animals, given the characteristics of their intervention.

It should be noted, in this regard, that the specific regulations governing professional associations determine the minimum information for registered professionals that, through the single window in the Register of Registered Professionals, must be the subject of active advertising for the better defense of the rights of users and consumers.

Thus, article 10.2 of Law 2/1974, of 13 February, on professional associations, provides the following:

"2. Through the mentioned single window, for the better defense of the rights of consumers and users, the collegial organizations will offer the following information, which must be clear, unambiguous and free:

a) Access to the Register of Associates, which will be permanently updated and which will contain, at least, the following data: number and surnames of the affiliated professionals, membership number, official titles of those in possession, professional address and status of professional qualification.

(...)"

In the same sense, article 40 bis of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, establishes the following:

"1. The professional associations must facilitate through the single window the procedures and procedures relating to free access to service activities and their exercise so that professionals can carry out electronically and remotely all the necessary procedures and know the processing status of the procedures in which they have the condition of interested Information useful for the best defense of the rights of consumers and users must also be provided through the single window.

2. In any case, professional associations must guarantee access through a single window to the following information:

a) Access to the register of members, which must be up-to-date, containing the following information: first and last names of registered professionals, membership number, official titles, professional address.

(...)"

Taking into account the public interest in the knowledge of the information requested for the control of compliance with the applicable regulations, as well as the fact that the identity of the people who exercise the veterinary profession, in the terms indicated, must be public and that the identity of the veterinarian involved in the event may also be known by other means, the data protection regulations would not in this case prevent the claimant's access to the requested information.

VI

The complaining entity also requests information related to the exercise of the inspection and sanctioning functions in animal protection matters that correspond to the City Council in accordance with the TRLPA.

In particular, the entity requests that *"we be informed if an investigation of the facts and the result thereof has been carried out"* (point VII). Also that *"we are informed if disciplinary proceedings have been initiated against the owner of the animal"* (point VIII).

Make it clear that the data protection regulations would only apply, regarding access to this information, to the extent that the result of the investigation that, if applicable, could have been carried out as a result of the events that occurred during the cavalcade of Kings or the information about the possible opening of a disciplinary procedure against the owner of the animal affecting natural persons (article 4.1) RGPD).

It should be remembered that, according to the information available, in the present case the organization of the cavalcade corresponded to a cultural association. Therefore, if reporting on the result of the investigation or the opening of a sanctioning procedure only involved providing information relating to this entity, there would be no disadvantage from the perspective of data protection in providing this type of public information to the claimant entity.

In the event that a natural person could be affected (it could be the case of the person who owns the equid), it should be taken into account that the information about the people investigated for their possible involvement in an event that could be constitutive of 'some of the offenses provided for in the TRLPA are considered information related to the commission of administrative offences.

Article 23 of the LTC only allows access to information relating to the commission of offences with the express written consent of the person affected by the requested access. Article 70.1 of the RLTC states that it is up to the requesting entity to provide this consent at the time of the access request, which is not recorded to have occurred in this case. Therefore, the right to data protection of the investigated person would prevail over the right to access said information of the claiming entity.

Point out, at this point, that the TRLPA grants the animal rights organizations that look after the general interests in the field of animal protection, as is the case of the claimant organization, the status of interested parties in the sanctioning procedures established in the same law *"in cases in which they have made the corresponding complaint or have formalized the appearance in the sanctioning file, without prejudice to the privacy of personal data"* (article 20.4).

Given this, the complaining entity should be able to know the result of the investigation in order, if it considers it relevant, to present the corresponding complaint. He should also be able to know if a sanctioning case has been opened for the purposes of being able to appear in defense of the animals in the specific case. However, the TRLPA itself expressly provides that access to this type of information relating to sanctioning procedures must be carried out while preserving the privacy of the persons affected.

The transparency regulations enable the possibility of giving access to public information with the prior anonymization of personal data (article 15.4 LT and article 70.5 RLTC), that is, so that the information that is given does not have a relationship with a person physical identified or identifiable.

The RLTC collects these forecasts, while establishing that, for the purposes of transparency, it is understood by anonymization *"the elimination of the personal data of the natural persons affected who they consist of the information and any other information that may allow them to be identified directly or indirectly without disproportionate effort, without prejudice to power maintain, where appropriate, the merely identifying data of the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act"* (article 70.6.a).

This, transferred to the case at hand, would allow, and it seems that it would be more in line with the terms of the request, to inform the claimant entity of the result of the investigation and of the opening of a disciplinary file. Although anonymization, due to concurrent circumstances, may not be fully effective in some cases, it would

an acceptable option in order to make compatible in this case the right of access of the claiming entity to said information and the right to data protection of the person under investigation.

conclusion

Data protection regulations do not prevent the requesting entity from accessing the requested public information that does not contain personal data.

The claiming entity has the right to accede to the agreement that, if applicable, could have been established for the celebration of the act. You also have the right to access information relating to the vets who intervened to which your request relates.

The complaining entity can also access the results of the investigation actions that have been carried out and find out if a disciplinary procedure has been opened when it refers to legal entities or, in an anonymized way, when it refers to natural persons .

Barcelona, May 26, 2022

Machine Translated