

Legal 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 a councilor's access to information about the Consum Bonus campaign.

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 councilwoman representing her municipal political group against a City Council, for the denial of access to public information about the Consum Bonus campaign.

The request, which is accompanied by a copy of the administrative file processed before the GAIP, has been analysed, and in accordance with the report of the Legal Counsel, the following report is issued.

Background

1. On February 9, 2022, a councilwoman and representative of a municipal political group at the City Council, submits a request, addressed to the City Council itself, in which she requests access to information relating to the execution of the campaign of the Consumption Bonus until December 31, 2021.

Specifically, the requesting municipal political group requests:

- "1. the number of vouchers redeemed by size of commercial establishment.*
- 2. the number of vouchers redeemed per user (number of people per number of vouchers redeemed).*
- 3. the number of vouchers redeemed by establishment name.*
- 4. the number of establishments joining the platform (...) during the Consum Bonus campaign.*
- 5. the number of establishments joining the different commercial axes, disaggregated by axis, during the Consum Bonus campaign."*

2. The file contains a copy of the City Council's letter dated March 15, 2022, in response to the aforementioned request, in which certain information is given about the Consum Bonus campaign. However, among others, regarding the number of vouchers redeemed by establishment name, the letter indicates that: *"Other specific establishment name data cannot be provided under the Law on the Protection of data."*

3. On April 11, 2022, the applicant submits a complaint to the GAIP, in which he states that the City Council had provided incomplete information about the Consum Bonus campaign, without any justification, according to the person claiming Specifically,

the person making the claim states that the City Council would not have responded to what was raised in points 1, 2 and 3 of the request presented to the City Council on February 9.

4. On April 20, 2022, the GAIP informs the City Council of the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to information public, and the identification of the third parties affected by the access that is claimed, if any.

5. On May 2, 2022, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCA 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 (Article 4.1 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 (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 period elapsed for the issuance of this report may lead to an extension of the period to resolve the claim, if so agreed by the GAIP and notified to all parties before the end of the term to resolve.

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

According to the information available on the municipal website, the person who submits the claim on behalf of his municipal political group, is listed as a councillor of the claimed City Council. This councillor, who submitted the claim to the GAIP on April 11, 2022, is requesting information from the City Council about the City Council's Consumption Bonus campaign.

As stated by the claimant in her letter of claim addressed to the GAIP, The City Council would have given him an answer that he does not consider adequate. Specifically, the councillor explains that *"of the various questions that are the subject of the petition, not all of them are answered, or they are answered partially. We refer, specifically, to the first, second and third of the questions raised in our letter."*

In the letter submitted to the GAIP, the claimant highlights the shortcomings that there would be, in her opinion, in the response given by the City Council, specifically in relation to points 1, 2 and 3 of her request .

Therefore, it appears from the letter of complaint submitted to the GAIP, that the complaint refers to the City Council's lack of response to the following information:

- "1. the number of vouchers redeemed by size of commercial establishment.*
 - 2. the number of vouchers redeemed per user (number of people per number of vouchers redeemed).*
 - 3. the number of vouchers redeemed by establishment name.*
- (...)."*

Given the claim in these terms, it is necessary to start from the basis that the data protection regulations apply to the treatments that are carried out on any information about identified or identifiable natural persons (art. 4.1 RGPD).

Therefore, this regulation will apply to the processing of personal data that may contain the requested information and that allow identifying, either directly or indirectly, without disproportionate efforts, specific natural persons.

Article 6 of the RGPD establishes that in order to carry out a treatment, such as the communication of data necessary to attend to an access request, it is necessary to have a legal basis that legitimizes the treatment, either the consent of the affected person (section 1.a)), whether it is one of the other legitimizing bases provided for, such as, that the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (section 1. c).

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 can only be considered based on the legal basis of article 6.1.c) of the RGPD when so established by a rule with the rank of law.

At the same time, according to article 86 of the RGPD: *"The personal data of official documents in the possession of some 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 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."

It follows from this that the access by councilors to the personal data that may contain, if this is the case, the information requested on the basis of the fulfillment of a legal obligation by the City Council, as the person responsible for the treatment, must necessarily be protected by a rule with the rank of law.

According to article 18 of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), *"people have the right to access public information, to referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1).*

State Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

Thus, the information that the City Council has on the Consum Bonus, either because it is prepared by the City Council itself or because it has been communicated to it, is public information for the purposes of the application of the transparency legislation (art. 2. b) LTC).

However, for the purposes that are relevant, it must be taken into account that 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 does so in their capacity as councilor of a municipal group of the corporation. Therefore, the assessment that can be made with respect to the obligation to provide or not to provide personal information of third parties must be examined 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)- with respect to that information available to the City Council that is necessary for the fulfillment of its functions.

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

III

This Authority has had the opportunity to analyze in previous consultations the councilors' right of access to the information available to the City Council, necessary for the exercise of the functions that correspond to them on previous occasions (among others, reports IAI 3/2020, IAI 41/2020, IAI 27/2021, IAI 28/2021, or IAI 63/2021, available on the website <http://apdcat.gencat.cat>).

It must be noted that the right of access to municipal information corresponds to councilors and not to the municipal group, and also that the recognition of this right is for all members of the City Council, therefore, regardless of the fact that found in the government team or in the opposition (art. 77.1 LRRL and art. 164.1 TRLMRLC, to which we refer).

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 (STS 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."*

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 that they have services of the City Council, for its control task and to document itself for the purposes of adopting decisions in the future (among others, STS of March 29, 2006).

However, as this Authority has done in the past, the exercise of this right of access to municipal information is in any case subject to certain conditions provided for in TRLMRLC and to the Regulation of organization, operation and legal regime of local entities (ROF), approved by Royal Decree 2568/1986, of November 28 (articles 14 and 15), without prejudice to what may be established in the organization regulation and operation of each local entity.

Article 164 of the TRLMRLC provides in which cases the corporation's services must provide information directly to the elected members and when the information must be requested or documentation, in the following terms:

"2. Corporation services must provide information directly to members of corporations when:

- a) Exercise delegated functions and the information refers to their own affairs responsibility*
- b) These are matters included in the agenda of the sessions of the collegiate bodies of which they are members.*
- c) It is about access to information or documentation of the local corporation that is freely accessible to citizens.*

164.3 In the other cases, the request for information is understood as accepted by administrative silence if a negative resolution is not issued within four days from the date of presentation of the request. In any case, the negative decision must be motivated, and can only be based on the following assumptions:

- a) When the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's image.*
- b) When it comes to matters affected by the general legislation on official secrets or summary secrecy.*

(...)."

In the same sense, the Municipal Organic Regulation of the City Council (ROM) that regulates the right to information of councillors. Specifically, according to the ROM: "*As members of the Plenary of the Municipal Council, its Commissions, the Board of Spokespersons or other collegiate bodies, councillors may obtain information on matters included in the agenda of the bodies of which they are members through access to the corresponding files. (...).*"

The councillor of the corporation, in the request for access to information presented to the City Council on February 4, 2022, states that the request has the following motivation:

"According to the Consum Bonus Report presented by the Municipal Government on January 19, 2022 to the Information Commission for Economy and Finance of the City Council of (...), which ignored the approved demand as well in the Commission to provide data on the number of vouchers redeemed by size of commercial establishment, plus the news that appeared in the last few days in some media in relation to the Consum Bonus campaign, it is necessary to know the details in more depth of this campaign."

According to the information available on the municipal website, the councillor making the claim is listed as a member of the City Council's Economy and Finance Committee, which would have accessed, as part of its duties, the aforementioned informative report.

It seems clear, from the information available, that the information claimed would be an extension or complement of that which the city council would have already provided, among others, to the councillor making the claim as a member of the Economy and Finance Committee, and which it considers incomplete.

In any case, at the outset, it seems clear that the request for information could fall within the provisions of article 164.2.b) of the TRLMRLC, given that it is information related to a municipal project in the which councillors who are members of the Economy and Finance Committee should be able to access (art. 12.4 ROM).

It remains to be seen, however, and for the purposes of this report, whether the data protection regulations could be an impediment to access to the requested information.

IV

In this context, we refer first of all to the information requested in points 1 and 2 of the request and subsequent claim to the GAIP:

- "1. the number of vouchers redeemed by size of commercial establishment.*
- 2. the number of vouchers redeemed per user (number of people per number of vouchers redeemed).*

(...)"

For the relevant purposes, it must be reiterated that the data protection regulations apply exclusively to the treatments carried out on **any information relating to identified or identifiable natural persons** (art. 4.1 RGPD). Therefore, this regulation only protects personal information **that allows specific natural persons to be identified directly or indirectly, without disproportionate efforts.**

The claimant does not ask for individualized information on each establishment (nor the identification of the establishment that has redeemed vouchers), but to be provided with the information "by size of commercial establishment". In other words, aggregate information is requested on the number of vouchers redeemed by size of commercial establishments in which they have been redeemed, without any other data allowing the identification of physical persons related to each establishment.

Therefore, in the event that the City Council has this information, the data protection regulations would not be an impediment to providing the information to councilors, since it is not information that directly includes personal data, nor that allows people to be identified individuals (people who have redeemed vouchers or individuals related to the establishments), neither directly nor indirectly, without disproportionate efforts.

This consideration is extended to point number 2 of the claim ("*number of vouchers redeemed per user (number of people per number of vouchers redeemed)*"), since this would be information that, in the requested terms, does not include personal information, nor would make it possible to identify specific natural persons, neither directly nor indirectly.

As stated in the councilor's letter of complaint, without prejudice to the information already provided to the councilors in the Report presented to the Economy and Finance Committee (January 19, 2022), she requests to know "*disaggregated the number of people who redeemed 1 voucher, the number of people who redeemed 2, how many 3... and so on until the person who redeemed the most vouchers.*"

The claimant does not request access to personal data - user identification data - or other information that allows direct or indirect identification, without disproportionate efforts.

In short, it must be concluded that if the City Council has the information referred to in points 1 and 2 of the claim, the data protection regulations do not pose an obstacle to facilitating access to the complaining councillor.

V

We refer below to the information requested in point 3 of the request and subsequent claim to the GAIP: "*3. the number of vouchers redeemed by establishment name.*"

According to the letter of complaint from the councilwoman, "*What is expressly requested, the number of vouchers redeemed by each establishment, is left unanswered arguing that this is data that cannot be provided under the Protection Law of data.*"

The councilwoman adds in the same letter that: "*(...) the Consum Bonus is a payment from the administration to a legal entity with a profit motive (in this case, commercial and restaurant establishments), through subsidy, the City Council of (...) cannot rely on data protection in order not to provide this information.*"

In addition to the fact that in the case at hand the provisions regarding subsidies referred to by the councilor would not apply, given that the application did not ask for the identification of the beneficiaries of the aid (person who makes the purchase and who gets it

the discount), the request for information can indeed affect the information relating to the natural persons who own the establishments that have redeemed the vouchers.

The RGPD extends its scope of protection to personal data understood as any information about an identified or identifiable natural person (article 4.1).

To this it should be added that 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, it must be agreed that the data protection regulations do not apply in cases where the owners of the establishments affected are legal entities, insofar as they are not holders of the right to data protection personal

Therefore, for the purposes of this report, the data protection regulations would not be an impediment to being able to deliver to the councilor making the claim the information requested regarding legal entities, that is, the name of the establishments participating in the Consum Bonus project that are legal persons.

However, the data protection regulations are applicable in relation to information that allows the direct or indirect identification of natural persons affected, including individual entrepreneurs and liberal professionals owners of the establishments that have participated in the municipal Bonus Consum campaign.

In relation to this case, it is necessary to take into account again article 164 of the TRLMRLC, specifically, section 3, according to which:

*"3. In the other cases, the request for information is understood as accepted by silence administrative if a negative resolution is not issued within four days from the date of presentation of the request. In any case, the resolution denial must be motivated, and **can only be based on the following assumptions:***

- a) When the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's image.*
- b) When it comes to matters affected by the general legislation on official secrets or summary secrecy."*

Access requests may be denied when any of the circumstances provided for in article 164.3 TRLMRLC occur, but 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 principle of minimization, according to which the personal data subject to

treatment must be adequate, relevant and limited to what is necessary in relation to the purposes of the treatment (art. 5.1.c) RGPD).

This principle implies, at the outset, that access to the information available to the City Council that includes certain personal data (such as those referring to individual entrepreneurs and liberal professionals who own establishments), without the consent of those affected, must link-necessarily to the exercise of the functions that correspond in each case to the councilor who requests the information, under the terms of the local regime legislation.

As has been said, the information requested could be understood as an expansion or concretization of the information already provided previously by the City Council, in the Commission of which the councilor is part, through the Report on the Bonus Consum initiative.

It seems clear, in any case, that the request for information is part of the functions of control and supervision of municipal action by councillors.

From the perspective of the principle of minimization, the treatment of essential data would only be justified in order to fulfill the purpose of control and supervision of the municipal action in relation to the Bonus Consum campaign.

Thus, it seems reasonable that knowing the identification of the specific establishments in which a certain number of vouchers have been redeemed (and not just knowing some percentages), can contribute to this work of control and inspection. In this sense, the required information can make it possible to know which types of establishments have redeemed the most vouchers, which specific location these establishments have, which characteristics, etc.

This can allow, among others, to control whether the information campaign in certain areas or in certain types of establishments by the City Council has been adequate or not; check if the number of vouchers redeemed is related to the characteristics of a specific trade, if it would be necessary to modify or improve future similar initiatives in view of the results obtained, etc.

To carry out this work of control and inspection, it seems reasonable to be able to know which specific establishments have been able to redeem a certain number of vouchers.

For weighting purposes, the information requested would simply provide specific information on the number of vouchers redeemed in each establishment that has participated in the initiative, and would make known which establishments these are.

The required information does not seem to have a special impact on the affected people since it is not a special category of data, it has no impact on their reputation, nor on their commercial strategy, since they are the beneficiary of the help that the establishment chooses. And while it is true that it may have an impact from the point of view of the information on the origin of the establishment's income, it must be borne in mind that this is a one-off campaign and that it should not predictably be significant in relation to the total volume of income of the establishment.

In short, simply knowing which establishments have participated in a campaign led by the municipal public administration and to what extent (number of vouchers redeemed) does not seem to generate any significant impact on the rights of

natural persons who own the establishments, such as their prestige or corporate or social image (the right to honor or professional prestige, which is part of the rights referred to in article 164.3.a) TRLMRLC) or patrimonial aspects.

In connection with this, it does not seem that the natural persons who own the establishments can have expectations of privacy in relation to the possible knowledge, on the part of councilors of the City Council itself, regarding the mere participation of said establishments in a municipal campaign, which could prevent the 'access to the information required by councillors members of the municipal bodies that must audit the municipal accounts.

For all that has been said, it does not seem that the right to the protection of personal data is an impediment to giving the councilor access to the required information (name of the establishment and number of vouchers redeemed).

In any case, from the perspective of the principle of minimization, it should be noted that it would not be relevant - because it is unnecessary for the intended purpose - to provide other data on natural persons related to the affected establishments, beyond the identification of the establishment

All this, without prejudice to the necessary compliance with the duty of confidentiality regarding the personal information to which councilors may have access for the performance of their duties (art. 5.1.f) RGPD and art. 5 LOPDGDD). Regarding the duty to respect the confidentiality of the information to which councilors have access by reason of their position, we also refer to the provisions of article 164.6 of the TRLMRLC and article 12.8 of the ROM.

conclusion

Data protection regulations do not prevent facilitating access to information relating to the number of vouchers redeemed by size of commercial establishment, and the number of vouchers redeemed per user without identifying the user.

Data protection regulations do not prevent the claimant from being given information on the identification of establishments and the number of vouchers redeemed.

Barcelona, June 3, 2022