

Report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to the complaint filed against a city council for denying access to information related to the operation of a residence and municipal day care center

The Commission for the Guarantee of the Right to Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim filed against a town hall for denying access to information related to the operation of a residence and municipal day center.

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 November 17, 2021, an association sends a letter to a town hall requesting the following information:

- "1) Protocol of visits to relatives of the residence and Day Center (...).*
- 2) Protocol for family members leaving the residence and Day Center (...)*
- 3) Protocol of autonomy habits of the residence and Day Center (...).*
- 4) Protocol for socio-cultural revitalization of the residence and Day Center (...).*
- 5) Protocol for projects aimed at enhancing the integration of the elderly in society and intergenerational relations of the residence and Day Center (...).*
- 6) Protocol for Healthy Aging projects, Leisure and Free Time Activities, Elderly Volunteering, Revitalization of External Centers, etc., of the residence and Day Center (...)*
- 7) Maintenance Protocol for the physical and cognitive functions of the residence and Day Center (...)*
- 8) Family care protocol aimed at promoting the relationships of the user's family and their environment in the residence and Day Center (...).*
- 9) Copy of the records of Social Rights and Health inspections at the residence from 2018 until now including the documents of the residence with the improvement plans required by the inspection.*
- 10) Copy of the ACCREDITATION documents of the TECHNICAL DIRECTORATE OF RESIDENTIAL SOCIAL SERVICES ESTABLISHMENTS sent to the Generalitat of the workers who have had responsibility as Technical Director from 2018 until today.*

- 11) *Copy of the SANITARY HYGIENIC RESPONSIBILITY ACCREDITATION documents sent to the Generalitat of the workers who have had responsibility as Sanitary Hygienic Manager from 2018 until today.*
- 12) *Copy the audits and certificates of the ISO 9001 and 158101 quality policy for the last 6 years and the 2021 quality plan.*
- 13) *Copy of the City Council's official Contract and Terms and Conditions with the current management company of the Residence and Day Centre.*
- 14) *List of services offered by the Residence and the Day Center included and also services not included by the residents.*
- 15) *Copy of the accreditation of the Dependency Law."*

2. On November 30, 2021, the Association sends a new letter to the City Council requesting the following information:

"A complete and exhaustive copy of the City Council Protocol (...) for the holding of the Plenary Session at the Municipal Building on November 2, 2021, in compliance with the guidelines of the measures established by the Generalitat de Catalunya to deal with the health crisis caused by COVID-19.

A complete and exhaustive copy of the report that the councilor of the Government (...) in the Plenary of November 2, 2021 said that the comptroller had done in response to the report of (...) member of the association, Nurse University and Law Degree read the member of the Association (...) at the Plenary of the town hall on October 2021."

3. On January 2, 2022, the association files a claim with the GAIP against the City Council for denying access to the requested public information.
4. On January 4, 2022, the association addresses a new letter to the City Council in which it again requests, jointly, the information requested in their letters of November 17 and 30, 2021.
5. On January 5, 2022, the City Council informs the association that it has received its request for access and that it is proceeding to compile the requested information.
6. On January 12, 2022, the City Council sends a letter to the concessionaire company of the residence and day center service requesting it to provide the information requested by the association, a circumstance that puts to the knowledge of the requesting entity on January 14, 2022.
7. On January 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.
8. On the dates of February 22, 2022 and March 1, 2022, the GAIP reiterates the requirement of the aforementioned documentation to the City Council.
9. On March 10, 2022, the City Council responded to the requirements of the GAIP through a letter from its mayor, in which she states that on February 3, 2022, she delivered the following documentation to the association:

- Contract formalizing the award of the concession.
- Set of clauses that governed the awarding of the concession.
- Internal regulations.
- Contingency plan.
- Letter read by the councilor (...) at the Plenary of November 2, 2021.

He also states that he informed the association of the following:

- There is no City Council protocol for the celebration of the November 2 Plenary.
- The letter read by the councilwoman at the November 2 Plenary can also be heard on the City Council's *YouTube* channel .

With regard to the rest of the information requested by the association, the City Council states that he could not hand it over because it was not in his possession, but from the concessionaire company for the residence and day center service. It also appears that, from the response given by the company, they are wondering whether the documentation they refuse to provide could be considered to be part of the company's internal protocols, which remain reserved in order to avoid giving relevant information about the operation of the company to competitors.

10. On March 16, 2022, the GAIP will send the claim to the concessionaire company of the service of the residence and day center, in order, as a third party affected by the claim, to make the allegations it considers appropriate and justify the reasons why it refuses to deliver the requested information to the City Council .

11. On March 16, 2022, the GAIP wrote to the City Council requesting additional information to the documentation provided on March 10, 2022.

12. On March 23, 2022, the City Council responded to this request for information from the GAIP, providing it with some of the additional information required. He also requests an extension of the deadline to communicate the rest of the information.

13. On March 29, 2022, the residence service concession company submitted a letter to the GAIP requesting access to the file relating to this claim in order to formulate the relevant allegations, to which the GAIP responds by facilitating it an anonymized copy of the file.

14. On April 8, 2022, the City Council informs the GAIP that it has requested from the Generalitat de Catalunya the information referred to in points 9), 10) and 11) of the request for information presented by the association.

It also informs you that the concessionary company of the residence and day center service has filed three contentious appeals against the City Council, following the sequestration of the concession, which are currently being processed.

15. On April 20, 2022, the Generalitat de Catalunya wrote to the GAIP requesting clarification regarding the request for information received by the City Council.

16. On April 22, 2022, the GAIP informs the Department that they understand that the aforementioned information requirement responds to a late referral from the City Council of the part of the request for information presented by the association that affects the Department.

17. On May 10, 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.

18. On May 17 and 23, 2022, the GAIP sent this Authority additional documentation in relation to this claim.

This documentation contains the information that the Department of Social Rights has given to the City Council in response to its request of April 8, 2022. It is, specifically, the information referred to by the association in the points 9), 10) and 11) of your access request. This information has been given to the City Council after anonymisation of the personal data contained in it, both of the subjects investigated and of the other people involved.

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 prepared, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."

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

III

As stated in the antecedents of this report, the claimant entity requests from the City Council various information related to the operation of a residence and municipal day care center. Specifically, request the following information:

- "1) Protocol of visits to relatives of the residence and Day Center (...).
- 2) Protocol for family members leaving the residence and Day Center (...).
- 3) Protocol of autonomy habits of the residence and Day Center (...).
- 4) Protocol for socio-cultural revitalization of the residence and Day Center (...).
- 5) Protocol for projects aimed at enhancing the integration of the elderly in society and intergenerational relations of the residence and Day Center (...).
- 6) Protocol for Healthy Aging projects, Leisure and Free Time Activities, Elderly Volunteering, Revitalization of External Centers, etc., of the residence and Day Center (...)

- 7) Maintenance Protocol for the physical and cognitive functions of the residence and Day Center (...)
- 8) Family care protocol aimed at promoting the relationships of the user's family and their environment in the residence and Day Center (...).
- 9) Copy of the records of Social Rights and Health inspections at the residence from 2018 until now including the documents of the residence with the improvement plans required by the inspection.
- 10) Copy of the TECHNICAL MANAGEMENT ACCREDITATION documents OF RESIDENTIAL SOCIAL SERVICES ESTABLISHMENTS sent to the Generalitat of the workers who have had responsibility as Technical Director from 2018 until today.

- 11) Copy of the SANITARY HYGIENIC RESPONSIBILITY ACCREDITATION documents sent to the Generalitat of the workers who have had responsibility as Sanitary Hygienic Manager from 2018 until today.

- 12) Copy the audits and certificates of the ISO 9001 and 158101 quality policy for the last 6 years and the 2021 quality plan.
- 13) Copy of the City Council's official Contract and Terms and Conditions with the current management company of the Residence and Day Centre.
- 14) List of services offered by the Residence and the Day Center included and also services not included by the residents.
- 15) Copy of the accreditation of the Law of Dependency.
- 16) A complete and comprehensive copy of the City Council Protocol for the holding of the Plenary Meeting in the Municipal building on September 14, 2021, October 5, 2021, November 2, 2021, November 30, 2021, December 14, 2021 and January 4, 2021, in compliance with the guidelines of the measures established by the Generalitat de Catalunya to deal with the health crisis caused by COVID-19.
- 17) A complete and exhaustive copy of the report that the Councilor of the Government (...) in the Plenary of November 2, 2021 said that the Technical Director had made and the comptroller answers to the report of (...) member of the association, University Nurse and Licensed in Law read the member of the Association (...) at the Plenary of the town hall on October 2, 2021."

As can be seen from the file sent, the City Council would have given the entity claiming part of this information, specifically, the contract and the set of clauses that governed the awarding of the concession (**point 13**), and the letter or report read by a government councilor in the Plenary of November 2, 2021 (**point 17**). I would also have informed him of the non-existence of any protocol for holding plenary sessions in compliance with the health guidelines adopted on the occasion of Covid19 (**point 16**). Besides that, it would also have delivered to the claimant the internal regulations and the contingency plan for the residence and day center.

Given this, the object of this claim would focus on access to the rest of the information referred to by the claimant in its request (points 1) to 12), 14) and 15)) .

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

In turn, the RGPD 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, at this point, that, in accordance with the available information, the operation of the service of the residence and municipal day center corresponds in the present case to a limited liability company.

The RGPD also provides that "(...) *data protection principles must not be applied to anonymous information, that is, information that is not related to an identified or identifiable natural person, nor to data converted to anonymous so that the interested party is not identifiable, or ceases to be so. Consequently, this Regulation does not affect the treatment of said anonymous information, including for statistical or research purposes*" (consideration 26).

In view of this, there is part of the information referring to the legal entity operating the establishment and in other cases the information has been anonymised, in addition to other documents which, by their nature, in principle do not seem to have to incorporate personal data. In these cases, from the perspective of the right to the protection of personal data, there would be no problem in handing it over to the claimant entity, given that the data protection regulations would not apply.

We refer specifically to the following information:

- The eight action protocols drawn up by the residence and day center (**points 1 to 8**)).
- The records of the inspections carried out by the Department of Social Rights at the residence and day center from 2018 to the present available to the City Council in an anonymized manner, both with regard to the data of the investigated subjects and of the rest of the people involved, and the improvement plans (**point 9**)).
- The list of services that the residence and day center offers and does not offer to residents (**point 14**)).

The rest of the information requested by the claimant entity (points 10 to 12) and 15)) contains or may contain personal data, 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's right of access to said information.

IV

As seen, article 18 of the LTC recognizes the right of access to "public information" in relation to the content given to this concept in article 2.b) of the same law: *"the information prepared by the Administration and which it has in its possession as a result of its activity or the exercise of its functions, including that supplied by the other subjects obliged in accordance with the provisions of this law "*.

It must be taken into consideration that according to article 3.1 of the LTC this law is not only applicable to public administrations and their instrumental bodies, to institutions statutory and public law corporations (referred to in letters a), b), and c) of this same article 3.1 LTC) but also:

- "d) To natural or legal persons who exercise public functions or administrative powers, who provide public services or who receive public funds to function or to carry out their activities for any legal title.*
- e) To natural or legal persons who carry out activities legally qualified as services of general or universal interest."*

However, article 3.2 of the LTC provides that, in these cases (those of sections 1.d) and i) mentioned), *"the compliance with the obligations established by this law must be made effective by the responsible Administration"*, which in a case like the one examined would be the City Council.

In order to enable the fulfillment of these legal obligations, the same article 3.2 of the LTC imposes on these subjects the obligation to inform the responsible Administration about (only) *"the activities directly related to the exercise of functions public services, the management of public services and the collection of public funds, and of the activities that remain under the supervision and control of the Administration in the case of services of general or universal interest"*, as well as on *"the remuneration received for (their) managerial positions" only when "the business volume of the company linked to activities carried out on behalf of the public administrations exceeds twenty-five percent of the general volume of the company"*.

Therefore, the LTC includes legal entities providing public services in its scope of application, although it obliges the administration responsible for their protection to comply with the obligations established in terms of transparency, both those derived from active advertising such as those arising from the exercise of the right of access to public information. And, for this purpose, said entities must deliver to the responsible administration the information referred to in article 3.2.

So, in a case like the one proposed, the concessionary company of the residence and day center service must hand over to the City Council all that information that is directly related to the management of the public service. And, if the volume of business linked to activities carried out on behalf of the City Council exceeded 25% of the general volume of the entity, should also inform him of the remuneration received by his managerial positions.

The claimant entity requests the documents relating to the accreditations of the technical management and the hygiene and health responsibility of the residence and day center for the period between 2018 and the present day (**points 10 and 11**), the ISO audits carried out in the last six years (**point 12**), and the accreditation granted to the establishment to care for elderly people with dependency (**point 15**).

All this information linked to the operation of the residence and day center can be considered information directly related to the management or operation of the public service of which the company is the awardee (article 3.2 LTC), so it must be delivered to the City Council or can be claimed by it, for the purposes of fulfilling their obligations in terms of transparency.

In the specific case, there is also the circumstance, as stated in the file sent, that during the period between April 21, 2020 and February 23, 2022, the City Council has directly managed the provision of service following the seizure of the concession. Therefore, with respect to this specific period, the City Council could a priori have or would have knowledge of this information, as responsible for the management of the service.

In any case, to the extent that the City Council has the aforementioned set of information, which contains personal data (Article 4.1 RGPD), it is necessary to examine, next, the eventual access of the complaining entity to said public information .

V

On the one hand, the claimant entity requests the ISO audits carried out in the last six years at the residence and day center (**point 12**), understanding that it refers to the final report of these audits. And also request a copy of the accreditation granted to the establishment social to care for elderly people with dependency (**point 15**).

Regarding this information, it should be borne in mind that, apart from containing information about the concessionary company of the residence and day center service, regarding which there would be no impediments to access from the point of view of the right to the protection of data, it may also contain, depending on the case, information of the person who has intervened in the audit - and who signs the corresponding report - and of the public employee who accredits the establishment in the terms indicated.

Article 24.1 of the LTC provides that *"access must be given to public information if it is information directly related to the organization, operation or public activity of the Administration that contains personal data merely identifiers unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail."*

This article of the LTC allows access to the merely identifying data of the people who intervene by reason of their functions in the different procedures or public actions carried out by the Administration, unless there are specific circumstances that justify the prevalence of the right to the protection of data of the person or persons affected or other constitutionally protected rights.

Article 70.2 of the RLTC specifies what is meant by merely identifying personal data in the following terms:

"For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and addresses, postal and electronic, of professional contact, referring to staff in the service of public administrations, senior positions and managerial staff in the public sector of public administrations.

In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature.

If the signature is electronic, the electronically signed document must be published in such a way that the properties of the electronic certificate used for the signature cannot be accessed.

The location data must be deleted in the event that it is not merely identifying data of the author in his position of position or staff in the service of public administrations.”

Therefore, in consideration of the transcribed articles, facilitate the claimant's access to the merely identifying data of the public employee who, in consideration of the functions assigned to him, has accredited the residential center to care for elderly people with dependency, a priori would not be contrary to the right to the protection of personal data. 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 and, consequently, to the accreditation granted to the establishment to care for elderly people with dependency **(point 15))**.

Regarding access to the data of the person authoring the final report of the requested ISO audits, the same conclusion should be reached, once the weighting required by article 24.2 of the LTC has been done.

This article provides that *"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 affected people 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. (...)."*

For the purposes of this weighting, it can be considered of public interest to be able to know the result of the ISO audits carried out at the residence and day center that certifies that the social establishment meets or complies with minimum quality standards in the provision of service And, in this sense, it would be of interest to be able to know, not only the final report in which the aspects analyzed and the corresponding conclusions on the management of the service in terms of excellence and quality are collected, but also the professional who prepares it in the exercise of their profession and that, therefore, certifies these aspects.

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 person, given that it would make it possible to know not only their identity but also a certain action professional. But it must be borne in mind that it would in any case be about aspects linked to the exercise of their profession. It would fall within the reasonable expectations you may have on your privacy the fact that this information can be known when the company or establishment that certifies aims to accredit the quality of the service it provides to third parties.

Therefore, it must be concluded that the claimant entity could also access the final report of the ISO audits carried out in the last six years at the residence and day center **(point 12)**.

VI

On the other hand, the claimant entity requests the documents relating to the accreditations of the technical management and the hygiene and health responsibility of the residence and day center for the period between 2018 and the present day **(points 10) and 11)**.

In view of the terms of the access request, it can be inferred that it is in the interest of the requesting entity to be able to know whether the accreditation of the persons who occupy or occupied the position of technical director and/or hygiene manager in the residence and day center by the owner of the establishment, and the conditions of these accreditations, comply with the applicable regulations.

Article 20 of Decree 284/1996, of July 23, regulating the Catalan System of Social Services, provides the following in relation to the staff of social services and establishments:

"20.1 Social services and establishments will have sufficient staff, in accordance with what is established in the typology of the annex to this provision. They will also have a person responsible for technical management with professional training.

20.2 The technical director directs the attention service that users must receive independently of being able to carry out other organizational and administrative functions.

20.3 The dedication of the technical director in the services of residential centers with more than 50 places will be, at least, 30 hours per week or an equivalent proportion when the number is lower. In any case, the dedication for residential service will not be less than 10 hours.

20.4 The services of residential centers and the services of day centers must have the support of a health and hygiene manager with appropriate qualifications, (...).

20.5 (...).

20.6 The functions of technical director and those of health and hygiene manager may fall to the same person when this person has the required training to perform both, as long as it is compatible with the time commitment of both. 20.7 (...).

20.8 The technical directors of the services of residential centers and day centers must be in possession of a minimum qualification of an average university diploma, preferably in the field of social sciences and health.

20.9 (...).

20.10 The dedication of the person in charge of the hygiene and health organization in the services of assisted residential centers for the elderly and for people with a decrease from 100 residents will be full-time or an equivalent proportion as established in the labor regulations, or in its default, the dedication will be similar. In any case, the minimum dedication will not be less than 5 hours per week."

Considering that the obligations of entities that provide public services have to be framed within the context of article 3.2 of the LTC, the eventual access to information about the staff of the concessionary company accredited to occupy these positions of responsibility in the residence and day center would be conditional on the fact that it was or not information directly related to the activity of the service provided.

And, in this sense, it could be understood that this information would be part of the information directly related to the activity of the service that is provided to the extent that the development of the tasks specific to the job they occupy should entail the possibility of being identified by the public in the same way as they would be identified if they were public employees of the corporation.

As seen before, article 24.1 of the LTC allows access to the merely identifying data of the people who intervene by reason of their functions in the different procedures or public actions carried out by the Administration, unless specific circumstances exist that justify the prevalence of the right to data protection of the person or persons affected or other constitutionally protected rights.

And article 70.2 of the RLTC specifies that, for this purpose, *"merely identifying personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and addresses, postal and electronic, of professional contact, referring to personnel in the service of public administrations, senior positions and managerial staff in the public sector of public administrations. (...)"*.

Despite the fact that the workers hired by the concessionary company for the residence and day center service are not public employees, it cannot be ignored that they would be providing a public service. And this can justify, in certain cases, the knowledge of the identity of the people who serve the citizens in the provision of this service, even if it is through indirect management. From the people's point of view affected, while it is true that the disclosure of their identity would affect their professional and private sphere, it is also true that in the exercise of certain tasks they should be able to be identified by citizens in the same way as civil or labor personnel could be .

The aforementioned article 20 of Decree 284/1996 establishes that the technical director *"directs the attention service that users must receive independently of being able to carry out other organizational and administrative functions"* (section 2). And he adds (paragraph 4) that the technical director and the health and hygiene manager must be jointly responsible for the following aspects:

"a) User access to public health resources without prejudice to the existence of other health resources.

b) Correct organization and administration of medicines. c) Supervision of the menus that are served and their adjustment to the food guidelines contained in the care file. d) Updating the data contained in each resident's care control document. e) Hygienic conditions of the establishment, users and staff.

f) Elaboration of the necessary protocols for the correct attention of users and their application."

For its part, article 18.9 of Decree 284/1996 provides that all establishments must have a notice board in a space frequented by users in which, at least, they must display, among of other aspects, *"the service hours for family members and users by the technical director and the health and hygiene manager"* (letter h)).

Taking into account these forecasts, it seems clear that both the users of the residence and their relatives must be able to know the identity of the technical director and the health and hygiene manager who attends them. And this possibility should also be recognized in the claimant entity to the extent that it is an association created specifically by the relatives of the users of the residence for the best defense of their rights.

From the point of view of data protection, providing the requested information about the persons accredited in these positions of responsibility would lead to an interference with the right to data protection of those affected, given that it would allow knowing not only their identity (name and surname) but the conditions of accreditation. Based on the information available, this would include the qualification they have, their membership number and even the dedication required for the position. But it should be borne in mind that it would in any case be about aspects linked to your professional activity and exercise of the profession as technical director and/or health and hygiene manager, so the impact on his personal life would be less.

With respect to the information on qualifications and membership, it should be noted that the specific regulations governing professional associations determine the minimum information for registered professionals that, through the single window in the Register of Members, must be the subject of active advertising for the best defense of the rights of users and consumers. Among this information we find *"names and surnames of the registered professionals, registration number, official titles of those in possession, professional domicile and status of professional qualification"* (article 10.2 of Law 2/1974, of February 13, on professional colleges).

Thus, the requested accreditations include information about the people they refer to (qualification and membership number) which must be available to any citizen and, consequently, also to the claiming entity.

With regard to dedication, it must be borne in mind that it is the same applicable regulations that require a minimum number of working hours that must be fulfilled by those who hold these positions of responsibility, so it is of interest to be able to know whether the residence and day center meets this requirement.

Thus, in accordance with article 20 of Decree 284/1996, *"the dedication of the technical director in the services of residential centers with more than 50 places will be, at least, 30 hours per week or an equivalent proportion when the number is lower. In any case, the dedication for residential service will not be less than 10 hours" (paragraph 3) and "the dedication of the person in charge of the hygiene and health organization in the services of assisted residential centers for the elderly and for people with disabilities from of 100 residents will be full-time or an equivalent proportion as established in the labor regulations, or failing that, the dedication will be similar. In any case, the minimum dedication will not be less than 5 hours per week" (section 10).*

From the point of view of data protection, providing this information would certainly lead to an interference with the right to data protection of those affected, but it must be borne in mind that, to the extent that the time slots are not detailed or the distribution specified of the working day, this affect is less.

In addition to all this, it should be borne in mind that the request refers to all those persons accredited in these positions of responsibility from the year 2018 to the present, which could affect people who no longer provide their services in the residence or that they no longer hold the positions in question. This, however, does not seem to lead to a conclusion different from the one indicated, given that in any case it would be a matter of accessing data linked to their professional activity and exercise of the profession in relation to a period of time in which they would have assumed this responsibility.

It is also necessary to attend to the circumstances of the specific case, especially the concurrence of a higher public or private interest that can justify access to the information. In this sense, it is necessary to bear in mind the existence of a conflict in the management of the residence and day center, which gave rise to the seizure of the concession. For power purposes control the provision of the service and its management in terms of quality, a purpose to which the LTC itself responds, it can be considered of public interest to be able to know whether the minimum requirements that the residential center must have for its operation have been met. And this is enough to have the professional profiles mentioned, as required by the applicable regulations.

On the other hand, by applying the principle of data minimization (Article 5.1.b) RGPD), access to the accreditation should cover only the information mentioned and not other identifying data such as the DNI number or the signature of the worker that may appear in the accreditation document. At this point, it is worth noting that, based on the information available, these data would have been omitted from the documents delivered to the City Council.

For all of this, it is necessary to recognize the right of the claimant entity to access the information, in the terms indicated, that the City Council may have on the accreditations for the positions of technical management and health and hygiene manager during the years 2018 and 'actuality in the residence and municipal day center **(points 10) and 11)**.

conclusion

The data protection regulations do not prevent the claimant's access to the requested information that does not contain personal data or any other

anonymized that the City Council has: action protocols (**points 1 to 8**), inspection records and improvement plan (**point 9**), and list of services offered (**point 14**).

The claiming entity has the right to access the information held by the City Council regarding the final report of the ISO audits carried out at the residence in the last six years (**point 12**), the accreditation of the residence to attend elderly people with dependency (**point 15**) and, in the terms set out in legal basis VI of this report, to the accreditations of the technical management and hygiene manager of the residence between 2018 and the present day (**points 10 and 11**).

Barcelona, June 2, 2022

Machine Translated