



Autoritat Catalana de Protecció de Dades

**Legal report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to a citizen's claim against a Council
County for the denial of the request for access to information about the money received by the political groups of the County Council**

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the Complaint presented by a citizen against the County Council, for the denial of access to information on the breakdown of expenditure by year and justification with invoices included of the money received by each political group of the County Council from June 2019 to June 2021.

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

Background

1. On December 7, 2021, the applicant submits an application to the Pallejà City Council, in which he requests access to the *"expenditure breakdown for the year and justification with invoices included of the destination of the public money received by each political group from June 2019 to June 2021."* As stated in the same letter, the citizen requests the referral of his request to the County Council.

Specifically, in the letter addressed to the County Council, the applicant requests access to the following information:

"Expenditure breakdown by year and justification with invoices included, of the destination of public money received by each of the political groups of the current legislature from June 2019 to June 2021."

As it follows from Sentence nº 1358/2021, of the Fifth Section of the TSJC Administrative Litigation Chamber, dated March 23, 2021, in Appeal 312/2018 filed by Barcelona City Council."

2. It is stated in the file that on January 14, 2022, the applicant would have submitted a claim to the GAIP, in which he states that the Regional Council would have denied him access to the requested information.

3. On January 25, 2022, the GAIP informs the County Council of the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to public information, and the identification of the third parties affected by the access that is claimed, if any. The GAIP reiterates its request to the Regional Council on February 17, 2022, given the lack of response from the local body.

4. On March 25, 2022, the GAIP informs the different regional political groups of the claim presented, and informs them of the possibility of presenting allegations.

5. On April 14, 2022, the County Council requests the GAIP, on behalf of the various political groups, to extend the deadline for presenting allegations and documentation. On April 19, 2022, the GAIP informs the County Council that said term is granted individually to each political group, so that it is these who, if applicable, can request an extension of the deadline for making allegations.

6. The file contains the response letters to the GAIP, sent by four regional political groups. These writings, with identical content, *state that "despite having considered the GAIP that our group is an affected party (...) we do not consider our rights to be affected."* And they add that if they are required, they will provide *"the interested person with access, with a view, to the invoices, and any other documentation justifying the expenses, anonymized where appropriate, charged to the allocations received from the County Council... in the current mandate (...)."*

7. On May 17, 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 APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must request a report from the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected (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 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

According to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), personal data is: *"all information about a identified or identifiable natural person ("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, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person; (art. 4.1 RGPD).*

Therefore, the processing of personal data (art. 4.2 RGPD) that may be contained in the requested information, specifically, the invoices justifying the expenses incurred by the political groups, is subject to the principles and guarantees of the protection regulations of personal data (RGPD).

According to article 86 of the RGPD:

"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, body or entity in accordance with the Law of the Union or of the Member States that apply it 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 29 December 2014, on transparency, access to information and good governance (LT), aims to regulate and guarantee the transparency of public activity.

Article 18 of Law 19/2014 establishes that *"people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (section 1).*

The mentioned article 2.b) defines public information as *"the information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions, including that which they supply the other obliged subjects in accordance with the provisions of this law".*

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

The information related to the money received by each political group in charge of the budgets of the Public Administration, specifically, the related invoices, is "public information" subject to the access regime provided for in the transparency legislation.

However, in accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information that contains personal data, it is necessary to assess whether the right to data protection of the affected persons can justify or not the limitation of the right of access to public information regulated in the LTC that invokes the person claiming

III

The object of the claim is to obtain a breakdown of the destination of public money received by each of the political groups of the County Council, with invoices included, in the period from June 2019 to June 2021.

Article 73.3 of Law 7/1985, of April 2, regulating local regime bases (LRBRL) provides:

"3. For the purposes of their corporate action, the members of the local corporations are they will constitute political groups, in the form and with the rights and obligations that are establish with the exception of those who are not part of the political group that constitutes the electoral formation for which they were elected or who leave their group of origin, who will be considered non-affiliated members.

The Plenary of the corporation, in charge of its annual budgets, may assign to the political groups an economic endowment that must have a fixed component, identical for all groups and another variable, depending on the number of members of each one of them, within the limits that, where appropriate, are established with general character in the Laws of General Budgets of the State and without which they can be allocated to the payment of remunerations of personnel of any type in the service of the corporation or the acquisition of goods that can constitute fixed assets of a patrimonial nature.

The economic and political rights of non-affiliated members may not be higher than those that would have corresponded to them remaining in the group of origin, and they will be exercised in the form determined by the Organic Regulation of each corporation.

This provision will not apply in the case of candidacies presented as electoral coalition, when any of the political parties that make up it decide abandon her

The political groups must carry out a specific accounting of the endowment to which they are refers to the second paragraph of this section 3, which will be made available to the Plenary of the

Corporation, as long as it asks for it.

(...)."

The LRBRL foresees that the Plenary of the corporation can assign endowments to political groups economic that must contain a fixed component, identical for all groups and one other variable, depending on the number of members of each of these groups, and within of the limits that may be established by the respective General Budget Laws of the State.

These endowments, the amount of which is to be set by the Plenary, cannot be allocated to the payment of personnel remuneration of any type in the service of the Corporation, nor to the acquisition of assets that may constitute fixed assets of a patrimonial nature.

From here, the information requested would include, on the one hand, each of the amounts that the County Council would have effectively paid to different political groups in terms of aid or subsidies, and on the other hand information on the destination that these groups would have given to the amounts received by these concepts, including the invoices that would justify the expenditure. All this, with respect to the period indicated by the person making the claim (from June 2019 to June 2021).

In principle, for the type of information that is requested, it does not seem that the information requested must contain data from some of the categories deserving of special protection referred to in article 23 LTC (case in which we should refer to the provisions of this article).

Therefore, it is necessary to take into account the provisions of article 24.2 of the LTC, according to which:

"2. If it is other information that contains personal data not included in article 23, access to the information may be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. 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 person making the claim does not explain the specific reason for which they want to access the requested information. According to article 18.2 LTC, the right of access does not require citizens to state the specific reasons for which they want to access public information, but these may be relevant when deciding on the prevalence between one and the other rights (public interest in disclosure or rights of affected persons). In fact, it must be remembered that the purpose is one of the weighting criteria provided for in the same law (art. 24.2.b) LTC).

In any case, in the absence of concreteness on the part of the person making the claim, the purpose of access must be placed in the context indicated by article 1.2 LTC, when it states that the purpose of the transparency law is *"to establish a system of relationship between people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of retention of accounts and responsibility in public management."*

It should be borne in mind that, in application of the LRBRL, the allocation of public funds is made to each political group and not to the specific natural persons who make it up (councillors in this case). Therefore, taking into account the data protection regulations (art. 4.1 RGPD), this information alone cannot be considered to be personal information.

Focusing, initially, on obtaining information on the amount of the subsidy received, it is worth remembering the forecasts regarding active advertising in relation to subsidized activity. According to article 15 of the LTC, subsidies and public aid granted must be published on the transparency portal with the indication of the amount, the purpose and the beneficiaries of the last five years, updated, the information regarding the financial control and the justification or retention of accounts by the beneficiaries.

Article 45.4 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), provides the following, for the purposes of the application of article 15 LTC, mentioned :

"In the case of subsidies and public aid granted by the local administrations to the political groups that are represented there, for their operation, and in accordance with the regulations of the local regime, the local administrations must publicize them in a separate space, containing the following data:

- a) The agreement that sets the amount and the elements related to the making of this decision.*
- b) The annual amount and the beneficiary political groups.*
- c) The object of the grant and the legal prohibitions on the destination of these funds provided for in current regulations.*
- d) The information relating to the justification or retention of accounts and/or financial control procedure, or evidence of its non-existence.*
- e) The declaration of each beneficiary group of the detailed list of annual expenses financed by these funds, grouped by specific concepts."*

In this sense, access to this information would allow the claimant to verify what the amounts paid to each of the political groups would have been and if these correspond to the financial endowments previously recognized by the General Assembly of the Corporation, information that could be relevant to effects of transparency in the control of the management of public resources by the County Council.

In this case, there is no disadvantage from the perspective of data protection regulations in the delivery of this information on the amounts received.

v

With regard to the specific destination of the subsidy obtained, for the purposes of transparency, it does not seem that there can be any doubts about the relevance that it can have for citizens to have the information that allows them to know what the political groups are spending the funds they receive of the budget of the local corporation.

With this information, citizens could form a critical opinion about the destination that each of the beneficiary political groups makes of the money from public resources. However, the question that must be raised is whether, in order to achieve the purpose of transparency, it is necessary to access the personal information that may be contained in the documentation to which it is intended to be accessed, specifically, as stated by the person making the claim, the invoices referred to the expenditure of the groups in the period indicated.

It is worth saying that, with regard to the various supporting invoices for these expenses, there is no specific information on what personal data they might contain.

However, taking into account the provisions of Royal Decree 1619/2012, of November 30, which approves the Regulation regulating invoicing obligations, it must be considered that invoices in general will contain, at least, the data corresponding to the invoice number, the date of issue, the name and surname, the name or full company name, both of the person obliged to issue the invoice and the recipient of the operations; the NIF; the address of the obligee and the addressee, among others. In the case of simplified invoices (art. 7 RD 1619/2012) they will include, among others, the NIF, the first and last name, as well as the company name or full name of the person obliged to issue it.

In general, and to the extent that the funds received by the political groups should be used for operating expenses, the range of expenses that could have been made with this money is wide. Thus, they can range from the purchase of office equipment, the rental of premises to exercise the group's activity, the organization of advertising campaigns, the hiring of external professional advice, to the payment of representation expenses (travel , meals, among others).

This information, on the one hand, could provide information on the activity of councillors in the group, depending on what information is included in the justifications (for example, lunch of certain councillors with other people in a certain restaurant) or that, without the need for their direct identification, the information can be related to a specific person (for example, in the case that the political group is made up of a single councillor). On the other hand, this information could also provide information on third-party natural persons with whom a good or service may have been contracted (for example if a professional was hired for external advice).

Even in the event that the expenditure may be related to the specific activity of a councillor, data protection regulations would not prevent access to this information. From the point of view of the person affected, it must be taken into account that these are people who they hold public positions, dispose of and make use, with a wide margin of discretion, of public money that should be intended to cover operating expenses of the political group of which they are part, and are therefore expenses linked to the public purpose that

they chase The need to control this margin of discretion in relation to the use of public funds can justify access to this information, for the purpose of controlling the expenditure of public funds pursued by the transparency legislation.

However, with regard to the information related to representation expenses (travel, meals, etc.) that can be related to the councilors of the different groups, it would be advisable to limit this information to the minimum content to fulfill the purpose of control the destination of the funds received by political groups, so that it is possible to access the concept of the expense without offering details that could be more invasive for the private life of the councilor concerned.

For example, with regard to information about lunches attended by a councillor, due to their representative function, this information could contain the names of the restaurants, the amounts paid, etc., but it would not be necessary to provide, for example, the information on the types of menus you have requested, or other information that allows you to analyze or establish certain aspects related to, for example, your health, your personal preferences or establish guidelines of conduct that are not relevant or necessary to achieve the intended purpose. Thus, the degree of interference with the privacy of the councilor would be much less and would respect the principle of minimization of personal data (art. 5.1.c) RGPD). Also by way of example, in the cases of the trips made by these people, it would not seem necessary to provide timetables or other details that could allow establishing patterns of conduct.

With regard to the third physical persons who would not be part of the political group and who could eventually be identified as issuers in the respective invoices justifying the purchases or services paid for by the political groups, in principle, in the absence of a greater concreteness on the reasons for which the access is of interest, it seems that it would be information linked to some professional activity (either as a result of facilitating supplies or the provision of services) so it must be understood that the intrusion into private life of these people would be minimal. In this sense, the need for control in relation to the use of public funds by political groups can justify access to this information.

It should be remembered that in the field of public administration procurement, the information on the identity of the contractors, the subject of the contract and the amount thereof must be published on the transparency portal, among others (art. 13 LTC) precisely as a measure of transparency in the use of public funds.

In the case of the local corporation groups, regardless of the procurement regulations that apply to them and the active advertising obligations they may have, it is clear that in the contracts they have signed using the public funds granted by the the administration also shares the need to justify the use of these funds to the public, with which the limitation of the right to data protection of the third parties with whom they subscribe would be fully justified when the right of access is exercised to public information.

All this without prejudice to the fact that, in application of the principle of minimization, it would not be relevant to give access to some data contained in the invoices (such as the private address of any councilor, if that were the case, or the numbers of their IDs that may be included in the invoices), already

that providing this data in particular does not seem necessary for the purposes of the intended purpose of transparency.

conclusion

The data protection regulations do not prevent the claimant from accessing information on the breakdown of the amounts allocated to each group and on the different expenditure concepts made by the groups during the requested period, for the purposes of controlling the destination of the funds they receive.

It also does not prevent access to the supporting invoices for expenses that contain personal data of the councilors, as well as third-party natural persons with whom they have contracted, although it would be necessary to remove from the supporting documents the information that allows to analyze or establish certain relative aspects to the personal life of the person making the expenditure, their personal preferences or establishing certain guidelines of conduct, as well as certain data (such as private addresses or ID number), which are not relevant to achieve the purpose of transparency.

Barcelona, June 16, 2022

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