

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 the refusal by a municipality of information on psychotechnical tests to carry weapons and shooting practices of local police officers .

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, submitted in relation to the denial by a town hall of access to information on psychotechnical tests to carry weapons and shooting practices of local police officers.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, in accordance with the report of the Legal Counsel, I inform you of the following:

Background

1. On January 18, 2022, a citizen, representing an association of residents of the municipality, presented a request for access to the following information before a city council:

"All the psychotechnical tests are accessed and copied, with the questions, the answers, the evaluations of the professionals on the results, the certification by the team of professional psychologists and psychiatrists of said tests and results of ALL the agents of local police of (...) are active or not, coded so as not to know the identity of the agents. Access and complete copy of the certifications of the shooting range where the 2 shooting practices have been carried out. All this documentation that is requested, is requested from the year 2006 to the year 2021.

We request documentation with the date and signature of the professional psychologists, psychiatrists, shooting instructors and other participants who have carried out these tests on the agents.

2. On February 20, 2022, the same citizen presents a claim to the GAIP which states the following:

"Given the absolutely incomplete response to public information from the local police officers who by law must carry out psychotechnical tests and shooting practices to keep the carrying of weapons active. Given the breach of the agreement reached between GAIP, COUNCIL (...), this information is requested in a more concise form."

3. On February 25, 2022, the GAIP sends the claim to the town hall, informs it that the claimant has requested the mediation process and also asks for a report setting out the factual background and the fundamentals of its position in relation to the claim, as well as the complete file and, where appropriate, specifying the third parties affected by the claimed access.

4. Through Decree number 354 of March 7, 2022, the city council resolves the request for access to information in the sense of partially estimating it. The resolution states the following:

"That is to say, the request of (...) must be considered partially, not admitting the part of the your request that is subject to the limits of the right of access to be personal data specially protected (article 23 LTAIPG and article 70 Decree 8/2021), as it was state in the mediation session with the Commission for the Guarantee of Access to Information Published on December 14, 2021 (specifically on page five of the Minutes signed by all parties) regarding claim no. (...).

That is, the request related to "Se nos de acceso y copia a TODOS los psicotécnicos, with the questions, the answers, the assessments of the professionals about them results, the certification by the team of professional psychologists and psychiatrists of said tests and results of ALL the local police officers of (...), whether or not they are active, in a coded form so as not to know the identity of the agents. Access and complete copy of the certifications of the shooting range where the 2 were carried out practicas de tiro (...)" cannot be provided, as the copy of all the tests psychotechnical (questions and answers), assessments and results would lead to access to data relating to the public health of Local Police officers(...), which are categorized as particularly protected.

It is a reminder that this corporation informed the applicant on January 14 of 2022, through settlement LGSOR 2022/388, of the following information: "that until on the date of this report, the members of the local police force (...) have completed and satisfactorily passed the psychotechnical tests for a the use of the regulatory weapon, as provided for in article 23.1 of Decree 219/1996, 12 June, which approves the local police arming regulations. That's all that's left pending the psychotechnical review for the use of the regulatory weapon of those members of the police who are on leave due to temporary incapacity, and which will be carried out when they join the service again". Consequently, this administration considers that the codification of the identification of the Local Police officers (...) should not proceed, as with the communication and information that is carried out, the interested party's request is resolved.

(...)

*FIRST.- **Partially estimate** the request for access to public information (...) for the reasons set out in the expository part and in the file.*

*SECOND.- **Provide** the requested public information in the following directions electronic:*

- Technical report of the Head of the Human Resources Unit where he accredits the professionals who have completed the corresponding tests:

(...)"

5. On March 29, 2022, the mediation session between the parties will take place, ending without agreement.

6. On June 13, 2022, the GAIP requests a report from this Authority, in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to information public and good government.

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, 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 (art. 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 Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

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

The claim that is the subject of this report is lodged against the partial denial of access to the information requested by the claimant in the following terms: *"test psicotécnicos, con las preguntas, las respuestas, la valoraciones de los profesionales sobre los resultados, the certification by the team of professional psychologists and psychiatrists*

tests and results of ALL local police agents (...), whether they are active or not, in a coded form so as not to know the identity of the agents. Access and complete copy of the certifications of the shooting range where the 2 shooting practices have been carried out. All this documentation that is requested, is requested from the year 2006 to the year 2021. We request document with the date and signature of the professional psychologists, psychiatrists, shooting instructors and other participants who have carried out said tests on the agents." This information contains personal data of both the local police officers and the professional psychologists, psychiatrists and shooting instructors that may be included in it.

The data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, apply to the treatments that are carried out on any information *"on an identified or identifiable natural person ("the interested party »); will be considered a person identifiable physical 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 physical, physiological identity , genetic, psychological, economic, cultural or social of said person".*

Article 4.2) of the RGPD considers *"treatment": any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation , adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction".*

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment *"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 can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so 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 of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation".*

It follows from all this that the applicant's access to the personal data that may contain the requested information on the basis of the fulfillment of a legal obligation by the City Council (responsible for the treatment (art. 6.1.c) RGPD), must necessarily be covered by a rule with the rank of law.

The right of access to information held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, LTC), which recognizes people's right of access to public information, understood as such *"the information prepared by the Administration and that which it has in its power as a result of its activity or of the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law"* (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The information subject to the claim is public information for the purposes of article 2.b) of the LTC, and is subject to the right of access (article 18 of the LTC).

However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data.

III

Article 23 of the LTC, relating to personal data deserving of special protection, establishes the following:

"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sexual life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents by means of a written which must accompany the application."

In similar terms, article 15.1 of Law 19/2013, of December 9, on transparency, access to public information and good governance, in its wording given by the eleventh final provision of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (LOPDGDD), provides that:

"1. If the requested information contains personal data that reveal the ideology, trade union affiliation, religion or beliefs, access can only be authorized if there is the express and written consent of the affected person, unless said affected person had made it manifestly public the data before access was requested."

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

The claimant requests access to the *"psychotechnical tests, with the questions, the answers, the evaluations of the professionals on the results, the certification by the team of professional psychologists and psychiatrists of said tests and results of ALL the police officers location of (...), whether or not they are active, in a coded form so as not to know the identity of the agents"*. As this Authority has previously highlighted, psychotechnical tests contain data on the health of the persons evaluated and must therefore be considered special categories of data under the terms of Article 23 of the LTC.

In the case at hand, given that the psychotechnical tests requested are of local police officers related to the use of firearms, it is appropriate to analyze the regulations on local police and, in particular, the regulation on the use of weapons for these policemen.

Law 16/1991, of July 10, on local police forces, establishes that local police forces are armed institutes of a civilian nature with a hierarchical structure and organization (article 2.1) and that local police officers must wear the regulatory weapons that assigned to them (Article 8.2) and must use weapons only in situations where there is a reasonably serious risk to the life or physical integrity of themselves or third parties and in the circumstances that may lead to a serious risk to public safety (Article 10.1) second d)).

Regarding the use of weapons by the local police, article 18 of Law 16/1991, establishes the next:

"The types of weapons that must be used by the local police, the characteristics of weapons depots, the rules for administering them and the necessary security measures to avoid their loss, theft or use improperly they must be determined by regulation, with the previous report of the Local Police Coordination Commission, in accordance with the current regulations on weapons."

In furtherance of these provisions, article 11 of Decree 219/1996, of 12 June, which approves the Local Police Arms Regulations, provides, in relation to weapons files, that:

"The town councils will open to each of the members of the local police a file containing all the data relating to the conservation, possession and use of the weapons and ammunition that they are legally equipped with, and any other data of interest related to the possession and use of the firearm. Periodic reviews, practices or training courses completed will also be included."

The reviews referred to in this article 11 include, according to Decree 219/1996 itself, psychotechnical reviews that must be carried out at least every two years and which consist of *"aptitude battery, personality questionnaires and other tests to detect dysfunctions or character anomalies and, if deemed necessary, personal interview or other complementary tests"* (article 23.1), as well as medical examinations (article 24).

For its part, article 27 of Decree 219/1996 establishes that:

"27.1 The results of the psychotechnical and medical reviews and the police marksmanship training practices will be incorporated into the personal file referred to in article 11 of this Decree."

27.2 The reports and contents of the psychotechnical and medical tests that justify the pass or fail result will be under the exclusive custody of the technicians who carry them out."

From the joint reading of these precepts, it follows that, with regard to the tests carried out by the local police on their ability to carry firearms, their weapons file will only contain the result obtained, which, as regards in the psychotechnical and medical examinations, it will consist of a pass/fail. That being the case, the city council should not have the psychotechnical tests and the corresponding evaluation given that these, in accordance with the analyzed regulations, remain in the hands of the specialist technicians who have carried them out.

In any case, both the psychotechnical tests and the medical tests, as well as the data on the fitness of a person to carry a firearm, in view of the nature of the tests to be carried out by this, constitutes data relating to the your health (Article 4.15 RGPD), that is, a data deserving of special protection (Article 9 RGPD) or special categories of data under the terms of Article 23 LTC, so the its confidentiality, unless the request had provided the express consent of the affected persons or that some other of the enabling circumstances provided for in article 23 of the LTC or article 15.1 of Law 19/ 2013, mentioned. If none of these circumstances occur, the right to data protection would prevail over the right to access said information and access to this information would have to be denied.

It is worth saying that the person making the claim requests this information anonymously. Regarding the possibility of facilitating access to this information anonymously, it must be taken into account that article 70 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC) determines what must be understood by anonymization for the purposes of this rule, thus establishing that anonymization is: *"the elimination of the personal data of the natural persons affected contained in the information and any other information that may allow identify them directly or indirectly without disproportionate efforts, without prejudice to being able to maintain, where appropriate, the merely identifying data of the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act"*.

As has already been explained, the city council should not have the information claimed for it to be in the hands of the professional assessors. In any case, if you hypothetically have this information, facilitating access to it by deleting the identifying data of the person evaluated, given the nature of the tests carried out, cannot be considered effective anonymization in the sense of guaranteeing the no re-identification of affected persons without disproportionate efforts.

Given the public significance of the use of firearms by the bodies police officers, the city council could provide, without the data protection regulations preventing it, aggregated information on the performance of the periodic fitness checks of members of the local police, so that it does not allow the identification of the affected persons.

IV

In relation to the rest of the personal data that may appear in the requested documentation that are not considered to be particularly protected, it will be necessary to adhere to the provisions established in article 24 of the LTC, according to which:

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

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the people affected. To carry out this weighting, the following circumstances must be taken into account, among others:

- a) The elapsed time.*
 - b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.*
 - c) The fact that it is data relating to minors.*
 - d) The fact that it may affect the safety of people.*
- (...)."*

The claimant requests that the information provided contain the date and signature of the professional psychologists, psychiatrists and shooting instructors or other participants in the tests carried out by the agents.

It should be taken into account that, both for the performance of the psychotechnical tests and medical, as for the performance of the shooting tests, Decree 219/1996, of 12 June, establishes the possibility for the mayor to request the collaboration of the Department of the Generalitat competent in the matter (articles 23 and 25 respectively). In this case, the professionals who participated in the preparation of the psychotechnical and medical tests, as well as those responsible for the shooting tests (according to the information contained in the file are usually carried out at the Police School of Catalonia) can be public employees.

In this case, paragraph 1 of article 24 of the LTC allows access to the merely identifying data of public employees 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 data protection of the person or persons affected.

Article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (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 the addresses, postal and electronic, of professional contact, referred to the staff at the service of the

public administrations, senior officials and managerial staff of 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, it would not be contrary to the right to data protection to facilitate the access of the person claiming to the merely identifying data of the public employees that may be recorded, on the occasion of the exercise of their functions, in the documentation claimed in the terms indicated, in the case at hand, of the public employees who, in the exercise of their functions, have certified the performance of the training tests for the use of the weapons of members of the local police.

According to this, the first and last names of the people who have certified the evidence could be provided, but not their handwritten signature, or other data such as the ID number, since this data would be irrelevant for the purposes of transparency .

In the event that these employees were members of the Police (Local or Mossos d'Esquadra), their identification should be carried out through their professional identification number in place of their first and last names (article 70.3 RLTC) .

V

With regard to the information requested about the professionals who have been able to intervene in the tests who are not considered public employees, paragraph 2 of article 24.2 of the LTC will be applicable, according to which:

"If it is other information that contains personal data not included in article 23, access to the information can 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.*
- (...).”*

In accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses what is the purpose he pursues and ultimately the reasons for which he is interested knowing the information adds a very important element to be taken into account as a weighting criterion between the public interest in the disclosure of the information and the rights of the people affected.

In the case we are dealing with, the person making the claim represents an association of residents of the municipality and states that the purpose of the access is to be able to exercise the right to control the actions of the administrations and, specifically, the correct action of the City Council in relation to the information requested.

In the absence of any other specific justification, the requested access should be understood as framed within the purpose of the transparency law itself, which, in accordance with its article 1.2, is *"to establish a system of relationship between people and the Public Administration and the 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 the retention of accounts and of responsibility in public management."*

In weighing up the rights of the interested party to access information about the professionals who have signed the claimed certifications and the right to data protection of these professionals, the possible harm that access would produce to the affected professionals and, on the other hand, if the access to their personal information allows the purpose of the access to be achieved, taking into consideration the principle of restrictive interpretation of the limits to access to public information and the principle of no need for justification.

Both in the case of doctors or psychologists, as well as other professionals who have been able to certify the tests carried out by the agents, who are not public employees, it can be said that their intervention in the accreditation process could be comparable to that carried out by an employee public. In addition, it is necessary to highlight the privacy expectations that these professionals must have in the exercise of certification functions, which are of a public nature.

On the other hand, it does not seem that access to the merely identifying data of these professionals and related to their professional performance could produce any significant damage to their privacy.

For this reason, unless there are specific circumstances that justify the prevalence of the right to data protection of these people, in this case the weighting should be in favor of access, as long as this is limited to the merely identifying data of these professionals.

VI

Finally, the claimant also requests access to the certifications of the shooting range where police shooting practices have been carried out from 2006 to 2021 for each of the officers. With respect to this information, a balance must be made between the claimant's right of access to public information and the right to data protection of the local police officers who are the subject of the claim (art. 24.2 LTC).

With regard to shooting training, article 25.1 of Decree 219/1996 establishes the obligation that all members of the local police, except those who have their weapons removed, carry out, at least twice a year, perfecting exercises in police shooting under the supervision of duly qualified instructors. The certifications of these practices are incorporated into the personal files of local police officers.

Certainly, for the control of the actions of the municipal administration regarding the fulfillment of the obligations related to the use of firearms by local police officers, it could be justified to know whether the City Council has carried out during the period of time claimed and with the minimum periodicity established by the regulations the corresponding police marksmanship training exercises, for the different agents who make up the local police. But this purpose could also be achieved without sacrificing the privacy of the people affected. At this point we should remember the principle of minimization according to which the data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (Article 5.1.c) RGPD). The principle of data minimization entails both the obligation that the person responsible for the treatment does not process personal data in those cases in which it is not necessary to process them to achieve a certain purpose, and the obligation that, in the event that it is necessary to process them, only the necessary and essential data will be processed, and also that no more processing will be done than is strictly necessary

In addition, it must be taken into account that the information requested by the person making the claim refers to a wide period of time (the shooting practices carried out from the year 2006 to the year 2021) and that in accordance with article 25 Decree 219/1996, these exercises are carried out at least twice a year, in such a way that the results of these practices, grouped with respect to the same person over such a wide period of time, can give rise, from the data protection side, to the creation of a profile on their professional capabilities, the disclosure of which could produce significant negative effects on the affected person, especially in the workplace, without which, both from the point of view of transparency and data protection, it can be considered justified.

Therefore, in this case, in the weighing of the rights at stake, the right to data protection of members of the local police would prevail, as regards the certification of the performance of shooting practices.

With regard to the possibility of facilitating access to this information anonymously, it would be necessary to assess whether the elimination of the personal identifying data of the affected persons (the TIP in the case of members of the local police) is an effective tool for guarantee the anonymization of the information provided (in the sense that the affected persons cannot be identified without disproportionate efforts). In order to carry out this assessment, it is necessary to take into account both the number of members of the Local Police staff, the context in which the communication would occur (a relatively small municipality), the length of the period analyzed (it would allow the agents with greater seniority to be more easily identified), the date of the tests, as well as the previous information that the person receiving the information may have about them.

According to the information available on the city council's website, the number of members of the police would be around 34 (including officers and commanders), even though the person making the claim has, a priori, no connection with the local police, it cannot be ruled out that in dealing with

of information relating to a small group and in a relatively small municipality there is no possibility that the person claiming has previous information that allows him to identify the holders of the information provided, in such a way that the deletion of the identification data of the agents would be ineffective anonymization. Therefore, it would be necessary to aggregate the information to a level that would guarantee anonymity.

conclusion

The person making the claim cannot access the personal information of the members of the Local Police, regarding the training tests to be able to carry firearms that have been practiced during the period of time to which the claim refers. It would be necessary to provide the aggregated information regarding the pass or fail results obtained for each period, as it seems that the City Council has already done.

The data protection regulations would not prevent access to the first and last names and position or category of the people who have certified the various training tests.

Barcelona, June 30, 2022

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