

**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 denial by a town hall of access to information on representation expenses, per diems and others.**

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the denial by a city council of access to information on access to representation expenses, per diems and others.

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 February 12, 2022, a citizen presents to a town hall a request for access to the following information:

"*In compliance with the Transparency and Right to All Information Act, provide us with a copy of all tickets and/or invoices that have been paid either in cash or by card and/or transfer and charged to this council, either in the budget items of the mayor's office and of each council, with details of the person who produced the expenditure, with whom, and the day and form of payment.*"

2. On March 31, 2022, the same citizen presents a claim to the GAIP in which he states the following:

*"Given that the expenses for lunches and others are exaggerated and that many are at a private level, we ask for a copy of all the tickets for the expenses and the people who*

3. On April 12, 2022, the GAIP sends the claim to the city council and requests a report outlining the factual background and the foundations of its position in relation to the claim, as well as the complete file and, if applicable, specifying the third parties affected by the claimed access.

4. On April 29, 2022, the city council sent a letter to the GAIP in which it states, with regard to the claim that is the subject of this report, the following considerations:

*"In the case of claim number (...) where it is specifically requested "copy of tickets and invoices that have been paid in cash, card and transfer, charged in this*

*council in all budget items of the mayor's office and corresponding councils" and "copy of these payments reflected in the cash journal with dates and items of each council detailed" since the beginning of the 2019-23 mandate, is assuming a task of reworking that involves allocating specific resources to it (Article 66.1 b) Decree 8/2021)."*

5. On June 30, 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 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')"; 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"*.

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 for 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 established in 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), data processing may 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 (hereafter, 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 his possession as a result of his activity or the exercise of his 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

The person making the claim requests that the city council provide him with *"a copy of all the tickets and/or invoices that have been paid either in cash or by card and/or transfer and charged to this council, either in the items budgets of the mayor's office and of each council, including details of the person who made the expenditure, with whom and the date and form of payment"*. And the claim for this information is justified by the fact that they have heard that the expenses *"on lunches and others"* are exaggerated and that many of them are *"on a private level"*.

From the content of the request for information and the claim it is clear that the information to which the claimant wants to access are the supporting documents for the representation or protocol expenses corresponding to both the mayor's office and the various municipal councils, or other municipal officials qualified for that purpose, with an indication of the person making the expenditure, with whom it was made, and the form of payment. This information will therefore contain personal data relating to the person in charge of the mayor's office and the holders of other council offices and, where appropriate, positions with authorization to incur representation expenses, but also of third parties such as those responsible within of the municipal organization to give conformity to the invoices or other accounting documents, other third parties with whom these municipal officials have been able to meet and who have motivated the representation expenses, as well as the data of the individual entrepreneurs that may be included in invoices and other evidence of expenditure.

At the outset, it should be borne in mind that 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."*

As this Authority has previously highlighted, the type of information provided by vouchers on certain expenses (restaurants, hotels and trips) can have important repercussions in terms of the right to data protection of the people who make these expenses, to the extent that they may reveal special categories of their data. Thus, by way of example, the fact of having information about the expenses that a person makes in restaurants, makes it possible to know not only the cost of the meal, but also the place where he eats and even what he eats (according to invoice detail). This information considered in isolation can already offer information in itself, for example, about certain aspects that affect the intimate and personal sphere of these people

such as following a certain diet linked to a health problem or even religious convictions.

Therefore, in the case at hand, it is necessary to take these aspects into consideration and analyze the requested documentation in order to remove from the supporting documents any information that may reveal health data, religious beliefs of the affected persons, or other special categories of data . Thus, in your case, you would have to provide the supporting documents (invoices, tickets or other supporting documents) without including detailed information on the composition of the meals, for example.

#### IV

It should be foreseen that the accounting procedure of the town hall requires the conformity of the head of the department or responsible for the service that carries out the control of the expenditure and that is usually accredited through the signature by the person on the invoices or receipts certifying the expenditure.

Article 24.1 of the LTC establishes:

*"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.*

In this case, paragraph 1 of article 24 of the LTC allows access to the merely identifying data of public employees that, by reason of their functions, may appear in the claimed documentation, 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 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 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 accordance with this, the first and last names of the people who have made the invoices could be provided, but not their handwritten signature, or other data such as the ID number, and, in the case of electronic signature of the invoices, it must not be possible to access the properties of the electronic certificate used for the signature.

## V

In relation to the rest of the personal data that may be included in the claimed documentation that are not considered to be particularly protected, it will be necessary to adhere to the provisions in article 24.2 of the LTC, which establishes:

*"2. 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 concerned with, the person making the claim justifies the claim on suspicions of spending on dinners of high amounts and even of a private nature. Therefore, 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 the public activity, the



*encouraging citizen participation, improving the quality of public information and administrative management and the guarantee of the retention of accounts and responsibility in public management."*

In the weighing between the rights of the interested party to access the requested information and the right to data protection of the person holding the mayor's office and the people holding council offices or other municipal offices, it should be taken into consideration for a on the one hand the possible damages that the access would cause to these people 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.

First of all, in relation to the information requested, articles 166 of the TRLRMC, 75 of the LRBRL and 13 of the ROF, regulate the financial compensation that corresponds to local elected officials for the exercise of their positions. Article 75 LRBRL distinguishes between: remuneration (of a salary nature) that is received for exclusive or partial dedication (sections 1 and 2); the assistances or remunerations that are perceived for the effective participation in the municipal collegiate bodies and that are appropriate only for the case of elected officials who do not have exclusive or partial dedication (section 3) and, the indemnities or compensations for the actual expenses incurred in the exercise of their position (section 4), expenses that must have prior documentary justification according to the rules of general application of public administrations and those approved by the Corporation's Plenary.

---

Regarding these remunerations, section 5 of article 75 of the LRBRL establishes the following:

*"5. Local Corporations will include in their budgets the remuneration, compensation and assistance referred to in the previous four numbers, within the limits that are generally established, as the case may be.*

*Plenary agreements relating to the remuneration of positions with exclusive and partial dedication and the regime of dedication of these latter, indemnities and assistance, must be published in full in the "Official Gazette" of the Province and posted on the notice board of the Corporation, as well as the agreements of the President of the Corporation determining the members of the same who will perform their functions in an exclusive or partial dedication regime.*"

Article 25.3 of the RLTC establishes a general forecast for the publication of the global amounts allocated to compensation and per diems, but does not establish the publication of them individually:

*"In relation to compensation and per diems, local administrations and their public sector entities must publish the amounts that the corporation approves annually for this concept and that are determined in the budget execution bases.*

*This section must be updated every time there is an update or change in the remuneration system or in the amounts with the approval of the new budget."*

However, in the case of elected officials, high-ranking officials and managerial staff, the LTC obliges public administrations to publish individually *"the remuneration, compensations and allowances, activities and assets of members of the Government, of high-ranking officials of the Public Administration and the management staff of public bodies, societies, the*

*foundations and consortia, and the compensation they must receive when ceasing to hold office" (article 11.1.b).*

In accordance with these provisions, the information on all remuneration received by the members of the municipal government must be published individually on their website or electronic headquarters (article 5 LTC) and should cover the full amount for any concept remuneration, compensation or diet.

The fact that the remuneration information of local government members, which includes allowances and allowances, must be public is an essential element to be taken into consideration when weighing the right to access the claimed information.

Given that the claim does not specify the people about whom you want to obtain the information:- it only refers to the fact that the expenses are charged to the budget items of the mayor's office and of each council.-, there is the possibility that the representation expenses have been justified by other municipal officials who are not members of the local government. It is a criterion supported by this Authority (among others, the report IAI 3/2019, IAI 33/2019 or IAI 44/2019) that the transparency obligations provided for in article 11.1.b) of the LTC can be made extensive requests for access to information that affects both the management staff and the staff who occupy positions of special trust, of special responsibility within the organization or at a high level in the hierarchy of the 'entity, of free appointment, or that involve a high level of remuneration.

In short, the fact that the transparency obligations provided for in article 11.1.b) of the LTC can be made extensive with respect to the remuneration information of this staff with regard to access requests, is another element to be taken into consideration in favor of access to the evidence of these remunerations, which are the subject of the claim

Certainly, the knowledge of the details of the representation expenses generated by the actions of the president of the corporation or of the various councils for a period of time, or other managerial staff, may be necessary to carry out an evaluation of the management of public resources that is part of the purposes of the transparency regulations.

From the point of view of the degree of impact on the privacy of the person holding the mayor's office, of the various councils or other municipal positions, which may mean access to the justification of the expenses and allowances received, although it will depend, as already explained, on the degree of detail with which these appear specified, in general it can be said that in principle this is information of an economic nature, linked to the work and professional activity of those positions, which would not significantly affect their personal sphere, except for considerations relating to the categories data specials and with the reservations that will be explained below.

It cannot be overlooked that this type of information can end up describing a pattern of behavior, in the case that allows us to know a habit, for example in the case that the person in question is a regular at a certain establishment, a certain means of transport, etc. ., which could affect in a highly intrusive way your right to the protection of personal data, affect particularly protected data.- as already explained:- or even your personal and family privacy, and may reach, in some case, even to affect your personal safety. These cases will have to be assessed on an individual basis, and it cannot be ruled out that according to the



type of information and the effects that its disclosure could have on the affected person, it is considered appropriate to limit, for that specific case, its access.

Therefore, although in accordance with what has already been stated above, there are sufficient elements that justify that access to the requested information should prevail, in accordance with the principle of minimization it would be necessary to eliminate from justifying the information on these aspects related to habits, personal preferences. Transparency must allow effective control of public resources, and this can be done without sacrificing these aspects of the private lives of the people affected. Therefore, as has already been pointed out, in order to avoid the communication of special categories of data, receipts may be delivered without including detailed information on the composition of the meals.

In the case of travel vouchers, in principle it also does not seem that there is a significant level of intrusion for the members of the local government who have carried out the travel, which should prevent them from providing the requested information. However, it cannot be ruled out that in some cases providing not only the date of the journey but also the exact hours could allow establishing a pattern of behavior that could end up affecting the safety of a person or that could at least end up affecting the normal development of his work or his private life. In this case, it would be appropriate to provide information in a way that allows spending to be controlled (for example, indicating the weekly frequency of travel and the amount of each trip), without it being necessary to provide timetables or other details that could allow establishing patterns of behavior .

## VI

In addition to the information that may affect the head of the mayor's office or the various councils, or other managerial positions, in the justification of compensation or travel information may also appear from third parties that may appear on invoices and cash receipts (issuers of the invoice).

With regard to the issuers of the invoices, in accordance with the provisions of Royal Decree 1619/2012, of November 30, which approves the Regulations governing invoicing obligations (specifically articles 6 and 7 ), invoices in general will contain, at a minimum, the data corresponding to the invoice number, the date of issue, the name and surname, the company name or full 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, they will include, among others, the NIF, the name and surname, as well as the company name or full name of the person obliged to issue it.

From the outset, the information relating to legal entities that may be included in the supporting invoices remains outside the scope of protection granted by the regulations on the protection of personal data (Article 4.1 RGPD). Consequently, there would be no impediment, from the perspective of data protection, for access to this type of information relating to legal entities.

With regard to the information of natural persons that may appear on the invoices, it should be remembered that in the field of public administration procurement, the information on the identity of the contractors, the object of the contract and the amount of the same , They have to be

published, among other information on the transparency portal (art. 13 LTC) precisely as a measure of transparency in the use of public funds.

Therefore, it does not seem that access to this information by third parties that may contain the invoices should be limited.

## VII

The claimant also requests to know the people with whom the expenditure was made. Is it would, therefore, be about information from third parties with whom the person in charge of the mayor's office, councilors or other municipal offices, have made the expenditure. This would be the case, for example, of information relating to people who have been invited to meals in formal or representative acts by those municipal officials. It must be taken into account that municipal regulations may establish restrictions regarding the people who can be the object of this type of expenditure (for example there are municipalities that prohibit the justification of expenses of restaurants or others of a similar nature made exclusively between staff municipal or with companies awarded services).

In this case, in the weighing between the right to access the information and the right of the affected third parties with regard to the protection of their personal data, the fact that it is related information has a specific weight with the control of public expenditure and how municipal resources are managed.

With regard to the possible damage to the right to data protection of these people, it is necessary to highlight that the people who benefit from this kind of protocol attention by the municipal representatives, in charge of the items of the municipal budget, they must have limited expectations of privacy.

Certainly, to the extent that transparency regulations impose on public administrations the obligation to publish the recipients of public subsidies, with more reason may be justified access to the identification with the name and surname and, where applicable, the position, of the people who have enjoyed these protocol attentions, where there may be a wide margin of discretion, for purposes control of municipal management and the allocation of public resources.

Consequently, with respect to this information, the right to access must prevail in such a way that the person making the claim must be able to know the identities of the people who have been subject to the protocol attentions that have caused the expenses, the justification of which is claimed.

## conclusion

From the point of view of data protection regulations, there should be no impediment to providing the person making the claim with information on the supporting documents for representation expenses (tickets, specific supporting documents) made by the person holding the mayor's office or of the different councils and other municipal positions, omitting the information that allows

analyze or establish certain aspects related to your health, your personal preferences or establish non-pertinent behavioral guidelines to achieve the intended purpose.

Nor would the data protection regulations prevent access to the data of third-party natural persons that may appear in invoices or other supporting documentation, nor to the name and surname and, where appropriate, the position, of the third-party persons with whom 'has made the expenditure.

Barcelona, July 15, 2022

Machine Translated