

## **Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against a professional association's denial of the request for access to information related to access to two files that affect the claimant**

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 refusal of a professional association of the request for access to information related to access to two files that affect the claimant.

Having analyzed the request, which is accompanied by a copy of the file of the claim submitted, in accordance with the report of the Legal Counsel, the following is reported:

### **Background**

1. They are presented to a professional association (henceforth, the association), on different dates, in which, among other issues, access to names and surnames is requested, and the rank, of the professionals who have had access to the applicant's data, in particular to two files relating to ethical complaints that he presented to the college.

According to the file, the college has denied the person requesting access to this information on the basis that the data protection regulations, in particular the regulation of the right of access, do not oblige to communicate this information. To justify the refusal, the college cites in one of its writings a resolution of this Authority.

2. On May 9, 2022, the applicant submits a new letter to the college in which he reiterates the terms of the previous applications, that is, access to the names and surnames and rank of the professionals who they have accessed said files and, he adds, any other procedure related to them.

3. On June 15, 2022, the applicant submits a claim to the GAIP in which he requests to know the identity (name and surname, and rank) of the people who have had access to his data, and in special to the files to which we have referred, and adds, in addition, the request to know if a certain person works at the school and, if applicable, if he has accessed or has the possibility of accessing his personal data (including the files).

4. On June 21, 2022, the GAIP sends the claim to the college and requests a report setting out the factual background and the foundations 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.

5. On July 5, 2022, the claimant sent an email to the GAIP in which he attached, among other documents, a letter supplementing the claim.

In this letter, the person claiming claims that the college has informed him that he will not be provided with information about the people who have accessed the files, and reiterates the

request to know if a certain person works at the college, and whether he has access permissions to the files to which he referred in the claim.

As can be seen from the letter, the claimant is requesting this information in order to consider taking legal action.

6. On July 8, 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 public information 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 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 .*

Public access to documents 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 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).

In the case at hand, it must be taken into account that the college is being requested to access the identity, and the rank, of the professionals who have accessed two files resolved following two deontological complaints made by the person making the claim, and find out if a certain person works at the school, and if they have also accessed the information of the person making the claim, including those two files, or have permissions to access it.

In accordance with article 3.1.b) of the LTC, this law is applicable to professional associations and public law corporations in what affects the exercise of their public functions. And, according to article 39 of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, "*the public functions of professional associations are:*

*a) Guarantee that professional practice complies with regulations, ethics and good practices, and that the rights and interests of the recipients of the professional performance are respected [...].*

*[...]*

*c) Exercise disciplinary authority over their members, in the terms established by law and the rules specific to professional associations. [...]" .*

To the extent that the person making the claim requests from the college information related to the function of the college regarding the guarantee of respect for the rights and interests of the recipients of professional action and the exercise of disciplinary authority, we are dealing with information that refers to the exercise of the school's public functions. Therefore, with respect to this information, the college is within the scope of application of the LTC, in accordance with article 3.1.b) of this Law, and this information must be considered public for the purposes of article 2.b) of the LTC and, therefore, subject to the right of access (article 18 of the LTC).

It must be noted, however, that this right of access is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case with the limits of articles 23 and 24 of the LTC regarding personal data.

### III

The person making the claim requests to know, on the one hand, the names and surnames and rank of the people who have had access to their personal data, and in particular to the two files related to the deontological complaints that they presented to the college and, on the other hand, to know if a certain person works at the school and, if applicable, if they have accessed or have access permissions to their personal data.

Prior to the analysis of the substantive issue, it is necessary to point out the fact that it is not clear whether the information related to access to their personal data, and in particular to the two files sent as a result of the complaints made by the person making the claim, they are requested by the school's own staff or also if there has been any external communication.

This doubt comes from the fact that in one of the writings that the claimant addressed to the school, on December 10, 2021, he also requests to know if any external third party or outsider has accessed the school. This, although the claim presented to the GAIP does not expressly mention it.

In relation to this circumstance, it should be noted that this Authority has issued statements on previous occasions in relation to the exercise of the right of access of the interested party (natural person holder of the personal data subjected to treatment) provided for in the legislation in the matter of data protection.

It should be noted that the transparency regulations, in particular article 24.3 of the LTC, provide that requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the legislation on the protection of personal data.

In relation to this provision, it is necessary to refer to article 15 of the RGPD, which regulates the right of access in the following terms:

*"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:*

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) **the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations ;***
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
- f) the right to present a claim before a control authority;*
- g) when the personal data has not been obtained from the interested party, any available information about its origin;*
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the person concerned."*

This precept recognizes the right of the interested person (in this case, the person making the claim) to request and obtain from the data controller (the college) a copy of their personal data subjected to treatment, in the case that concerns us, including those contained in the files relating to the deontological complaints you made, and including certain information about this treatment, such as, for the purposes that concern, the recipients to whom these have been communicated or are expected to be communicated data

However, as this Authority has ruled, the accesses of staff who provide services for the person in charge cannot be considered as "communication" (art. 4.7 RGPD), given that this staff is part of the person in charge.

Thus, through the exercise of the right of access to personal data provided for in the data protection regulations (art. 15 RGPD), the person making the claim can access the identity of the recipients of the information that is not personal of the school or of any person in charge of the treatment, if applicable. On the other hand, he would not be able to access the

accesses of people who are dependent on the school. The possibility of accessing this information must be analyzed in accordance with transparency legislation.

#### IV

The person making the claim requests access to the information relating to the people under the school's authority, that is to say, the names and surnames and their rank who have accessed the aforementioned files.

It should be noted that although the nature of the information held by the college may affect categories of data referred to in article 23 of the LTC, especially health data, we must bear in mind that this information is related to the person making the claim, and that the information requested does not actually include health data since it is limited to information related to the people who have accessed, or to know if a certain person works at the school and information regarding your access permissions. Therefore, Article 23 of the LTC would not apply to the information requested, and the analysis must be carried out in accordance with Article 24 of the LTC.

Thus, article 24 of the LTC provides for the following:

*"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 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in disclosure and 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.*

*3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the data protection legislation staff."*

At the same time, it is also necessary to take into account the provision of article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), from which:

*"2. 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 number are purely identifying personal data and the addresses, postal and electronic, of professional contact, referred to the staff in the*

*service of the public administrations, senior positions and managerial staff of the public sector of the 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."*

In the case at hand, the person making the claim requests to know the first and last names, and the rank, of the people who have had access to their personal data, and in particular to the administrative files sent following the formulation of two complaints deontological

On the basis of Article 24.1 of the LTC, and Article 70.2 of the RLTC, it does not appear that there should be any impediment in granting access to information relating to the name and rank of persons who have accessed the aforementioned files, given that they are merely identifying data related to the activity carried out within the College.

It should also be borne in mind that this is a measure that allows control by the person concerned, of which people have accessed their personal information, therefore, from the point of view of the right to data protection, this access obeys a legitimate interest and constitutes a guarantee to control the appropriate treatment of the information by the person in charge of the treatment.

Now, it is necessary to be in the provision of article 31 of the LTC, to the extent that the public information may affect the rights or interests of third parties, in order for them to be given a transfer of the request to be able to submit to the delegations if these can be decisive for the meaning of the resolution.

However, it is necessary to take into account article 70.4 of the RLTC, which establishes:

*"4. For the purposes of access to this purely identifying personal data, prior to the start of the provision of services or occupation of the position, the public administrations must inform the staff, senior positions and management personnel that this personal data may be disseminated or transferred, without the need to give them the transfer of the access request referred to in article 31 of Law 19/2014, of December 29, and article 62 of this decree.*

*In the communication, it is necessary to warn them of the rights to oppose it and to highlight, in a motivated way, the prevalence of the singular damage that the transfer may cause to their personal data or other constitutionally protected rights. It should also be noted that the processing of this data is based on compliance with the legal obligation to allow the exercise of the right of access to public information. "*

This means that if the college has communicated at the time of starting the employment relationship (or at a later time for employment relationships started before the entry into force of the RLTC) the fact that your identifying data they can be transferred to the protection of 23

LTC and 70.2. and 3 RLTC, warning of the possibility of exercising their right to oppose it, it would not be necessary to transfer the access request.

v

The person making the claim also requests to know if a certain person works at the school and, if applicable, if he or she has accessed or had the possibility of accessing the two files sent as a result of the ethical complaints submitted.

With regard to the information relating to whether a certain person works at the school, and that relating to whether he has accessed, it is necessary to reiterate the same conclusion reached in the previous legal basis, that is to say, on the basis of article 24.1 of the LTC and 70.2 of the RLTC, a priori it also does not seem that there should be an impediment to knowing this information.

However, with regard to the second part, that is to say, to know whether the worker in question has had the possibility to access the two files, it seems that the person making the claim refers to his desire to know whether the worker has or has had permissions that enabled access.

This issue, insofar as it is not merely identifying data referred to in article 24.1 of the LTC, and article 70.2 of the RLTC, must be analyzed in accordance with the weighting criteria of article 24.2 of the LTC between the public interest of this information and the right of the affected person to the protection of his personal information.

It should be borne in mind that article 18.2 of the LTC provides that the exercise of the right of access to public information is not conditioned on the fact that a personal interest is involved, as well as not remaining subject to the motivation or invocation of no rule, but knowing the motivation of the request can be a relevant element to take into account when making the weighting required by article 24.2 LTC.

The claimant, in the email dated July 5, 2022 addressed to the GAIP, states that the requested information is required to evaluate taking legal actions.

It should be borne in mind that the purpose of the transparency regulations is *"to establish a system of relations between people and the public administration and other obliged subjects, based on knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of accountability and responsibility in public management"* (article 1.2 LTC). Or in other words, to establish the possibility of offering tools to citizens for the control of the actions of the public authorities.

It is clear that knowing the information relating to the access permissions of a person working at the school, in the context in which the access request is formulated, can allow the person making the claim to verify the security measures adopted by the school in relation to access permissions and their control, such as if a person who did not have permission to access certain information accessed, or if, despite not having done so, they would have permissions to do - it

It does not seem that from the point of view of the right to the protection of personal data, accessing this information could lead to a significant intrusion for the affected person. However,



it is necessary to bear in mind that access to this type of information (in general, the disclosure of the specific people who are qualified to access a certain type of information) in certain cases may end up compromising the security of the affected information.

For this reason, it is considered that access to this information should be limited to the finding that the people who have actually accessed the information had permissions to do so. And this, transferred to the case at hand, should lead to the fact that, with respect to the specific person from whom information is requested, the information on whether he had permission or not is only handed over in the case that he has accessed the information

### **conclusion**

The data protection regulations do not prevent the person making the claim from communicating the information relating to the traceability of access to their personal information, in particular, knowing the first and last names and the rank of the people who have accessed it.

There is also no impediment to accessing information relating to whether a certain person is part of the staff of the professional association and, in the event that they have accessed it, whether they had access permissions to the information relating to the person making the claim.

Barcelona, September 1, 2022