

## **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 of access to the file of the application of the protocol against school bullying in case of a minor.**

The Commission for Guaranteeing the Right to Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim, presented in relation to the denial of access file of the application of the protocol against school bullying in the case of a minor .

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 September 13, 2022, a citizen sent a letter requesting the following public information:

*"For all the above, exercising my right of access to public information, I request that the chartered college (...) provide me with the following documentation and information.*

- The integrity of the documentation that makes up the application file of the protocol against harassment and cyberbullying among peers in the case of my daughter(...).*
- Correspondence with affected parties.*
- The proceedings of the various interviews:*
  - o *With harassed minors where it is explored what the episodes of harassment consisted of with the corresponding collection of graphic evidence that supported their story.*
  - o *With the harassing minors and their means of proof.*
  - o *With the observers*
  - o *With the families (persecutors and harassed) and provision of documentation/evidence.*
- The charter of the assessment team, which lists its members and the considerations they arrived at.*
- Documentation and evidence on which the director of the center bases her assessments, listing the alleged cases of indirect harassment and because she does not mention the cyberbullying that my daughter was suffering (of which the director of the center was aware).*
- Why is there no mention in the protocol of one of the minors reported as a harasser, who is precisely the daughter of a worker at the center?*
- Because the protocol does not mention that a worker at the center and the mother of one of the bullied girls (the one the protocol does not include) approached my daughter in the street to try to persuade her to report the situation of harassment.*

- Based on that information and arguments, the school adds a child (PS) as an alleged bully in the protocol. A child that neither the bullied minor nor the family had ever mentioned.
- If the defamatory letter signed by several parents of the harassing families was part of the protocol.
- That we be informed, as the valuation report collects at what time and by which means the evaluation of the protocol was communicated to the EAP. This statement is false, proof of this is that Education has on several occasions reprimanded the school for not reporting to the EAP.
- That the management of the school clarify the statement "some specific moments of harassment of EC and IV students are appreciated, but not harassment as such".

2. On October 11, 2022, the requested Department issued a resolution rejecting the request for access to the requested public information. The rejection is based on *"the fact that the requested documentation contains information of minors and data considered particularly protected. In addition, the disclosure of this information may affect the free development of the personality in the future of these minors.* (Foundation of law 8).

3. On October 12, 2022, the applicant filed a complaint with the GAIP against the Department for the denial of access to the file relating to the harassment of his daughter. In the claim, it states that you want access to:

*"Access to the documentation of the application file of the anti-harassment protocol in the case of my daughter. (...)"*

4. On October 25, 2022, the GAIP will send the claim to the Department, requiring it to issue a report on which to base its positions, as well as the complete file relating to the request for access to the public information and the identification of third parties affected by the requested access. The documentation sent does not include the corresponding report from the Department or the complete file relating to the request for access to information.

5. On October 25, 2022, the claimant sends an email to the GAIP in which he states, in relation to his claim, that it is not his intention to have access to personal data, much less if it is the data of minors. In this regard, he requests that the information be given to him anonymously.

6. On November 3, 2022, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

## Legal Foundations

I

(...)

II

The claim is lodged against the denial by a Department of access to the documentation of the application file of the protocol against harassment and cyberbullying between peers , relating to the claimant's daughter. Point out that the object of the claim is the same as that of a previous claim, which was the subject of the report IAI 37/2022 of this Authority, dated September 30, 2022.

In this claim, the complete application file of the claimed protocol is not included among the documentation sent by the GAIP. The only thing that is included, provided by the claimant himself, is the report on the application of the protocol signed by the director of the center. Although the complete file is not available, it can be expected that it will contain personal data of both the claimant's daughter and the other minors involved, as well as their parents and those responsible for processing the file, among others To the extent that this information contains personal data, the RGPD will apply.

Article 4.2) of the RGPD considers *““ treatment ”: cualquier operation or set of operations performed on data personal or data sets \_ personal , yes either by procedures automated or not, such as collection , registration, organization , structuring , conservation , adaptation or modification , extraction , consultation, use , communication by transmission , diffusion or any another form of enabling access , comparison or interconnection , limitation , suppression or destruction . ”*

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides that the treatment will be lawful if *"it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment "*.

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data it can only be considered based on this legal basis of article 6.1.c) of the RGPD when this is established by a rule with the rank of law.

For its part, article 86 of the RGPD provides that *“the data personnel of official documents in possession of some public authority or body public or a private entity to carry out a mission in interest public may be communicated by said authority , organism or entity in accordance with the Law of the Union or of the States members that apply them in order to reconcile public access to official documents with the right to data protection personal under this Regulation . ”*

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC recognizes the right of people to *"access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person"* (section 1).

Article 2.b) of the LTC defines "public information" as *"the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions , including that supplied by the other obliged subjects in accordance with the provisions of this law"*.

For its part, article 53.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), specifies that it is public information subject to the right of access *"all the information, any data or documents that the public administrations have prepared, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."*

The information available to the Department linked to the case of alleged school bullying of the minor daughter of the person making the claim is public information for the purposes of article 2.b) of the LTC and, therefore, remains subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (Article 20 et seq. LTC).

Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account what is established in articles 23 and 24 of the LTC, as well as the principles of the personal data protection regulations.

### III

The decision of the Department of Education that denies access to the information subject to the claim is based on the fact that the information contains special categories of data relating to minors.

Regarding special categories of data, article 23 of the LTC states 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 the event that the file claimed contains special categories of data on the claimant's daughter, as she is a minor and the claimant holds parental authority, it must be taken into account that article 15 of the RGPD recognizes the right of access to your personal information 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 interested party.*
2. (...)
3. *The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.*
4. *The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."*

As this Authority has done on previous occasions (among others, in reports IAI 9/2021, IAI 21/2021, IAI 51/2021 or IAI 3/2022, which can be consulted on the Authority's website), in based on article 15 of the RGPD, the claimant has the right to know the direct information about him that is being treated by the Department and that is part of a file or that is included in the documentation or information that he requests . And this includes (article 15.1.g) RGPD) the identification of the source of the information.

In addition, article 12.6 of the LOPDGDD provides that *"the holders of paternal authority may exercise in number and representation of children under the age of fourteen the rights of access, rectification, cancellation, opposition or any other that may correspond to them in the context of this organic law"* .

By application of the aforementioned regulations, the person making the claim, to the extent that he is the holder of parental authority, he has the right to know the information about his minor daughter that is being processed by the Department and that is recorded in the file on the application of the school bullying protocol between peers, which is part of said documentation.

In the event that the claimed file contained data of other minors other than the claimant's daughter, or of other persons, who require special protection in accordance with article 23 LTC, access to this information should be denied .

#### IV

It should be foreseen that the file claimed also contains information relating to the authorities or public workers who have intervened due to the functions assigned to them, in its processing. Regarding this information, it is necessary to take into account the provisions of article 24.1 of the LTC, which provides 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."*

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

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

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

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

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

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

With regard to the transcribed articles, facilitate the claimant's access to the merely identifying data of the persons who, in regard to the responsibilities or functions assigned to them, have participated in the application of the peer bullying protocol in his daughter's school and/or in his control, in the terms indicated, a priori would not be contrary to the right to the protection of personal data. This, unless, exceptionally, in a specific case the protection of personal data or other constitutionally protected rights must prevail, which is not the case in the present case.

As indicated in article 70.2 of the RLTC itself, it is not relevant in these cases to provide other identification data of employees or public officials - such as the ID number or the handwritten signature - that may appear in the documentation subject to access, given that these data, from the point of view of the principle of minimization (article 5.1.c) RGPD), are unnecessary for the intended purpose, that is for the citizen to be able to identify the authorities and staff at the service of the public administrations that attends in its performance before the Public Administration and/or under whose responsibility the procedures are processed.

Consequently, it would be necessary to eliminate the ID number and the handwritten signature of the authorities and public employees that may appear in the requested documentation.

**v**

With regard to the rest of the information that the claimant file may contain that is not considered special categories of data under the terms of article 23 LTC, article 24.2 of LTC will have to be applied according to which:

*"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.*
- (...)."*

First of all, a consideration must be made regarding the data that may appear in the file, relating to the teachers, tutors or the director of the institute, for having intervened in the processing of the file. Given that the school that processed the requested file is a chartered school, its workers will not, in principle, have the status of civil servants or public employees. In this case, the weighting of article 24.2 LTC must take into account, on the one hand, that the functions performed by these workers are, in principle, the same as those that would correspond to public employees with respect to which article 24.1, foresees, as has been explained, that access to their identifying data must be given, as well as the privacy expectations that these workers may have with respect to the actions carried out in the exercise of their duties. On the other hand, it is likely that this information is already known by the claimant and, therefore, the damage that may occur to his privacy should be considered minor. In view of these considerations, the weighting must be favorable to the right of access to the identifying data of these people.

With regard to the rest of the information that contains personal data of the claimant or his daughter, the first element to be taken into consideration when weighing Article 24.2 LTC is the right recognized in Article 15 RGPD, which as has been set out in the basis IV of this report grants the claimant the right to know the information that the Department is dealing with regarding his minor daughter following the application of the peer bullying protocol and that is part of the 'file claimed.

The existence of this right, recognized by data protection regulations, makes a difference

necessarily the weighting referred to in article 24.2 of the LTC in favor of access to the own data contained in the requested documentation, which would include the data of his daughter.

The right of access to one's own information also includes, among other aspects, the right to know the origin of this information (Article 15.g) RGPD). In the documents that accompany the complaint, the person making the claim refers to the fact that interviews were carried out with the parents of the allegedly harassing minors. In the event that the file contains information relating to interviews or statements made by third parties, such as the statements of other minor companions of the claimant's daughter or her parents, from the perspective of article 24.2 of the LTC, and in relation to article 15.4 of the RGPD, it is necessary to consider whether the person claiming would have the right to know both the identity of these people and the statements made.

To this end, although article 18.2 of the LTC provides that the exercise of the right of access to public information *"is not conditioned on the concurrence of a personal interest, it is not subject to motivation and does not require the invocation of any rule"*, knowing the motivation of the request can be a relevant element to take into account.

According to the statements made by the claimant in his claim, the purpose of the intended access is *"to be able to prosecute the malpractice of the school (...) and the Educational Inspectorate in the application of the protocol against the harassment in the case of my daughter"*.

In this sense, knowing the origin of the information that affects the person making the claim and his daughter may be relevant to be able to refute certain facts or situations described by these third parties, to the extent that they may have influenced the decision of the center school about the existence or not of signs of school bullying of the minor.

It should be borne in mind that in accordance with the provisions of article 24 of the Spanish Constitution, all people have the right to obtain the effective protection of judges and courts in the exercise of their rights, as well as, among others, they have the right to use the evidentiary elements that are relevant for his defense.

In this context, for the purposes of guaranteeing the proper exercise of the right to effective judicial protection (Article 24 EC), it cannot be ruled out that the person making the claim must be able to access that information that is necessary for the defense of their rights and interests, or those of your minor daughter, including personal information. In this case, knowing which people attribute to the claimant's minor daughter and also to herself facts and/or actions that would threaten her interests, could be relevant to her right of defence.

In addition, it cannot be ruled out, given the context in which the reported events occur, that the identity of these people (or some of them) may be known by the person making the claim.

From the point of view of the affected persons, disclosing information about the identity of these third parties who have been able to provide information about the claimant and her daughter may affect them to the extent that they are persons with whom, both they and their children, share in the school environment. The revelation of what they may have said or not



said about the person making the claim, the daughter and the events reported could end up negatively affecting the relationships these people may still maintain.

For this reason, this Authority has noted the special relevance that it has in these cases to comply with the hearing procedure provided for in article 31 of the LTC, and to know if there are personal circumstances or reasons that would justify preserving their identity .

As this Authority has previously highlighted, for the purposes of limiting access, it is necessary to prove specific circumstances that allow a clear prejudice to be appreciated due to the fact that the person making the claim can access the identity or other personal data of these people. Thus, for example, the mere manifestation of the affected person's refusal to access their data would not be sufficient for this purpose.

In view of the concurrent circumstances in the present case in view of the information available, and without prejudice to what may result from the mentioned hearing procedure, a priori it is possible to identify with the first and last names the third persons who have provided information about the claimant and his daughter, which may be included in the file, as well as the information provided.

However, it would be necessary to eliminate other identifying data of these people (ID numbers, signature) and contact data, in accordance with the principle of data minimization (Article 5.1.c) RGPD), to be irrelevant for the intended purpose of access.

## **conclusion**

The data protection regulations would not prevent the claimant's access to the information contained in the application file of the anti-bullying protocol, relating to him and his minor daughter to the extent that it is holder of parental authority. There would also be no problem in facilitating access to the merely identifying data of public employees or public officials in charge of processing the harassment file, nor of the teachers, tutors or the director of the center where the events took place, that may be included. Likewise, access to the identification data of the people who have provided information about the claimant's daughter and the information they contributed to the file about her could be facilitated, unless, following the hearing procedure, there is some reason that justifies its limitation.

In the event that the file contains special categories of data of other people other than the claimant's daughter, access to this information should be denied.

Barcelona, November 24, 2022