

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 denial by a Department of the request for access to certain authorizations for the use of resources for extractive activities

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 Department of the request of digital copy of certain authorizations for exploiting resources of extractive activities.

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

Background

1. According to the documentation sent, on March 29, 2022, a person representing a neighborhood platform, together with five other people, presented a letter to the Territorial Services of a Department in which they denounced irregularities and breaches of mining and environmental regulations in certain operations in a municipality. In particular, the loss of validity of the exploitation authorizations was denounced.
2. On April 11, 2022, the Department, through the territorial services, responded in writing to the complainants informing them that it had opened a period of preliminary proceedings to verify, verify, review the facts described in the complaint, and in in your case, process the corresponding sanctioning administrative files.
3. On August 18, 2022, the representative of the neighborhood platform, together with three other people, submitted a new letter to the Department in which they insist on denouncing the facts that were denounced in March 2022.

In this letter, they also request from the Department access to the digital copy of the resource exploitation authorizations relating to certain extractive activities.

4. On September 26, 2022, the Territorial Services of the Department responded to the complaint.

In this letter, the Department states that the facts reported have been checked and, ultimately, no irregularities have been found. It does not appear in relation to the request for access to the digital copy of the exploitation authorizations that were requested on August 18, 2022.

5. On October 4, 2022, the person who holds the representation of the neighborhood platform (henceforth, the person claiming) presents a claim to the GAIP in which he claims access to:

" Digital copy of the authorizations for the exploitation of localized resources for extractive activities in the municipality of [...]".

6. On October 6, 2022, the claimant submits a new letter to the Department in which he requests a digital copy of the records of the inspections carried out on the farms referred to.

7. On October 7, 2022, the GAIP forwards the claim presented on October 4, 2022 to the Department, and requests a report setting out the factual background and the basis for its position in relation to the claim, as well as the complete file and, if applicable, specifying the third parties affected by the requested access.

8. On October 31, 2022, the Department will send the GAIP a report with a copy of the complete file relating to the claim.

In the report sent, the Department states that the information requested contains personal data of natural persons who provide their professional services at the expense of the owner in the mining operations. To the extent that the person making the claim represents an entity without a NIF and has not been accredited to represent a public interest, he considers that *"[...] should be excluded from the information that facilitates the identification of natural persons who provide their labor services in the exploitations contained in the resource exploitation authorization. Access should be given to the identification data of the Administration staff (name and position of those who sign the reports or communications included in the file), in accordance with article 24.1 LTAIPBG and article 70 of Decree 8/2021, of February 9, on transparency and the right of access to public information."*

The Department provides with its writing a table of affected third parties in which, for each exploitation, the identification of the exploiter and the NIF and an email address are stated. In all cases it is verified that the exploiter is a legal person.

9. On November 17, 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 complaints against resolutions regarding 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 contained in the requested information is outside the scope of this report, in particular, according to the allegations made by the parties, the limits provided for in articles 21.1.d) and 21.1.g).

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 we are dealing with in which access is requested to information relating to certain resource exploitation authorizations issued by the Department , this information must be considered public for the purposes of article 2.b) of the 'LTC and subject to the right of access (article 18 of the LTC), as it is documentation in his possession as a result of his activity.

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

At the outset, before the analysis of the substantive issue, it is appropriate to make an emphasis on the delimitation of the object of the claim.

The person claiming, on August 18, 2022, together with other people, requested from the Department access to the digital copy of the authorizations for the exploitation of resources located in certain extractive activities in a municipality. And, on October 4, 2022, in the face of the Department's lack of response, the claimant, individually, submitted an access claim to the GAIP with the same purpose.

On the other hand, it is also stated in the file sent that on October 6, 2022 the person claiming submitted a new request for access to public information to the Department in which he requests a digital copy of the minutes of the inspections carried out in the same farms located in the municipality.

However, it should be borne in mind that when the GAIP sends the claim to the Department on October 7, 2022, it specifies that this request refers to the claim that was submitted on October 4, 2022.

For this reason, it is considered that the access request made on October 6, 2022 must be outside the scope of this report. Consequently, the analysis carried out in this report must be limited to the claim for access to the digital copy of the authorizations for the exploitation of localized resources for extractive activities .

IV

Once the object of the claim has been defined, it is necessary to determine what is the content of the resource exploitation authorizations to which the person making the claim intends to access in order to analyze which data protection limits may apply to the case specific

In accordance with what is established in article 2 of Law 22/1973, of July 21, on Mines, all deposits of natural origin and other existing geological resources in the national territory, territorial sea and continental shelf, they are public domain assets on which research and exploitation can be undertaken directly by the State or transferred in the form and conditions established by this law and other provisions in force in each case.

Article 3 of Law 22/1973 classifies mineral deposits and other geological resources in different sections:

" A) Those of little economic value and geographically restricted commercialization belong to the same, as well as those whose sole use is to obtain fragments of appropriate size and shape for direct use in infrastructure works, construction and other uses that do not require more operations that start, break and calibrate.

B) It includes, according to the definitions established in the first chapter of Title IV, mineral waters, thermal waters, underground structures and deposits formed as a result of operations regulated by this Law.

C) This section includes all mineral deposits and geological resources that are not included in the previous ones and are subject to exploitation in accordance with this Law.

D) Coal, radioactive minerals, geothermal resources, bituminous rocks and any other mineral deposits or geological resources of energy interest that the Government agrees to include in this section, at the proposal of the Minister of Industry and Energy, after a report from the Geological Institute and Minero de España ."

As can be seen from the file sent, in particular, from the Department's report sent to the GAIP on October 31, 2022, in the case we are concerned with, the exploitation of resources corresponds to the exploitation of deposits included in sections A and C referred to in article 3 of Law 22/1973.

It should be borne in mind that, in any of these cases, Law 22/1973 establishes the need to have an exploitation authorization in the case of resources in section A (art. 17), or the direct granting of exploitation in the case of the resources of section C (art. 37.2).

Article 28.2 of Royal Decree 2857/1978, of August 25, which approves the General Regulations for the Mining Regime, regarding the regulation of the exploitation of resources in section A, establishes the following:

" 2. The Provincial Delegation, after identification of the land and verification of ownership, for which it will request a report from the Provincial State Attorney's Office if it considers it necessary, will grant, once the existing mineral resource has been classified, the exploitation authorization in which will be recorded:

a) Extent and limits of the land object of the authorization, accompanied by a site plan.

*b) **The person or natural or legal persons in whose favor the authorization is granted.***

c) Class of resource or resources and use of the products to be obtained and, where applicable, value of annual production and maximum geographic limit of its commercialization.

d) Duration of the authorization, which may not exceed that for which the petitioner has proven the right to exploitation.

e) The conditions that are necessary for the protection of the environment.

In the Provincial Delegations, a general register of resource exploitations of Section A) will be kept for each province according to an official model ."

On the other hand, article 90.2 of Royal Decree 2857/1978 provides that the exploitation concession title in the case of the resources referred to in Section C), will state:

*" **name and surname** , or company name, **and domicile of the petitioner** ; number, number and resource of Section C) object of the concession; corresponding extension and situation, as well as municipal and provincial terms; date and reference of the demarcation plan and **number of the Engineer who extended it** ; special conditions that are considered convenient and, among them, those suitable for the protection of the environment "*

On the basis of these forecasts, and from the perspective of data protection regulations, in the authorizations or operating concessions affected by the access request made by the person making the claim, they will be affected, at least , on the one hand, data relating to the identification of the person or natural persons to whom the authorization is granted (name and surname, contact details, data linked to the operation, etc.)

On the other hand, in the case of resource exploitation concessions referred to in section C, the data of the engineer who has extended the demarcation plan will also be included.

And, finally, it must be taken into account that the identification data of the people who have the competence to grant the exploitation authorization or the exploitation concession, according to each case, will also be included.

identification data of those who have the competence to grant the exploitation authorization or the exploitation concession, according to each case, it is necessary to take into consideration what is established in article 24.1 of the LTC according to which "*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*". Accordingly and, except in exceptional cases in which it is necessary to preserve the privacy of these, access to information containing merely identifying data of employees or public officials can be facilitated.

For this purpose, it is necessary to take into account the provisions of article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information, by which it is necessary to understand as merely identifying data the consisting of the name and surname, the position or position held, body and scale, the functions carried out and the telephone and postal and electronic addresses, of professional contact, referring to personnel in the service of public administrations, senior positions and management personnel of the public sector of public administrations.

Regarding the data of the person or persons to whom the exploitation authorization or concession of exploitation was granted, it should be borne in mind that in the case at hand and in accordance with what is contained in the file sent, the Department has stated in its report sent to the GAIP on October 21, 2022 that the third parties affected by the access request are legal entities.

To the extent that the authorizations or concessions affected by the access claim made only affect data relating to legal entities, it must be taken into account that on the basis of what is provided for in articles 2.1 and 4.1 of the RGPD, in relation to what is established in recital 14, there must be no inconvenience from the perspective of data protection regulations in providing the person claiming the access they claim.

It is foreseeable that the file may also contain data on who acts as the representative of the legal entity. However, as we have seen above, this does not appear to be information that should be included in the authorization.

In fact, from the file sent it seems clear that the claimant's interest is not in knowing the personal data that could eventually be contained in the authorizations or exploitation concessions, but to verify their validity with the objective, if understood, to strengthen the arguments of his complaint regarding the loss of the validity of the authorizations or concessions for the exploitation of resources that he specifies in his request for access.

For this reason, in application of the minimization principle of article 5.1.c) of the RGPD 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, would lead us to conclude that the purpose of the person claiming could be achieved equally without the need to sacrifice the privacy, if applicable, of these people.

Lastly, regarding the possibility of access to the data relating to the engineer who has extended the demarcation plan, which must be included in the resource exploitation

concessions of Section C, the analysis is must carry out in accordance with the provisions of article 24.2 of the LTC.

Article 24.2 of the LTC provides for the following:

"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."

This article establishes the need to make a reasoned weighting between the public interest in the disclosure and the rights of the people affected, taking into consideration, among others, the time that has passed, the purpose of the access, the guarantees that are offered , if there are minors affected or the fact that the intended access could affect the safety of people.

From the point of view of the engineers signing the demarcation plans, it should be noted that their identifying data (name and surname and member number) and profession, is information that the corresponding professional associations must already make public. And, a priori, the level of intrusion that access to this data entails would not be substantially different from the one who has the competence to grant the exploitation authorization or the exploitation concession, so that he can enter their expectations of privacy that may end up knowing their participation in the preparation of the documentation that is required in order to request, or extend, the exploitation concession.

However, although 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, in the case at hand we must take into account, as previously explained, that the person claiming requests the information in order to substantiate the arguments of his complaint, in relation to the loss of validity of the resource exploitation authorizations or concessions you specify in your access request.

For this reason, in application of the minimization principle of article 5.1.c) of the RGPD, we must also reach the conclusion that the purpose pursued by the person making the claim could also be achieved without the need to sacrifice the privacy of the engineers who signed the demarcation plan referred to in the regulations.

conclusion

The data protection regulations do not prevent the claimant's access to the information relating to the authorizations for the exploitation of localized resources of the extractive

activities that are requested, except for the data of the person who holds the representation of the legal entities to which authorizations or exploitation concessions were granted, if applicable, and the data of the engineers signing the demarcation plans contained in the resource exploitation concession titles.

Barcelona, December 12, 2022

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