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Autoritat Catalana de Protecció de Dades

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 of a citizen against the regional administration for the denial of access to information on the number of unique cases dealt with in the traffic units

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 by a citizen against the regional administration, for the denial of 'access to information on the number of unique cases attended to in the traffic units aggregated by Catalonia and crossed by sex and age (specified year by year, not by age ranges) from 2012 to 2021, both inclusive.

Analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, in accordance with the report of the information technology and security coordinator, and in accordance with the report of the Legal Advice, the following report is issued.

Background

1. On October 13, 2022, the applicant submits an application to the Regional Administration in which she requests access to public information, based on Law 19/2014, of December 29, of transparency, access to public information and good governance (henceforth, LTC) , specifically:

"I request the number of unique cases handled in traffic units aggregated by Catalonia and crosses by sex and age (year by year, not by age ranges) of the years 2012 to 2021 inclusive."

2. The file contains the Resolution by which the request for access to public information is partially approved (...) , which responds to the request made. In summary, the Resolution concludes that:

*"(...) the aggregated data must be sent **by age** group because the set of patients treated by the transit units is still very small in Catalonia. Thus, based on the weighting between the public interest of this data and the interests of confidentiality that this Administration must preserve, sufficient limits must be applied to prevent, in any case, the indirect identification of the patients treated by the traffic units."*

3. The file contains a copy of the email message, dated November 14, 2022, by which the requested Administration would have sent the Partial Estimate Resolution to the applicant, as well as the corresponding information. Specifically, as stated in the file, a sheet in which the number of cases, aggregated, is broken down, by year (from 2012 to 2021), and by sex assigned at birth ("female/male/not recorded") by age groups, as the requested Administration argues that the information must be given.

4 . It is stated in the file that on November 17, 2022, the applicant would have submitted a claim to the GAIP, in which she states that the requested Administration would have denied her access to the information in the terms in which it only ·requested (the number of unique cases attended to in traffic units aggregated by Catalonia and crossed by sex and age (year by year, not by age ranges) .

5. On November 17, 2022, the GAIP communicates the claim submitted to the requested Administration, and requests the issuance of a report, the complete file relating to the request for access to information public, and the identification of the third parties affected by the access that is claimed, if any.

6. On November 18, 2022, the requested Administration sends the requested report to the GAIP (which, in summary, reproduces the reasoning of the Resolution dated November 11, which should have addressed to the applicant, and which is sent to the GAIP), together with the file relating to the request made. The available information does not indicate that information about affected third parties, if any, has been sent to the GAIP.

7. On December 2, 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

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 (Article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereafter, RGPD).

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

According to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), personal data is *: "all information about a 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;* (art. 4.1 RGPD).

The treatment (art. 4.2 RGPD) of any information referring to identified or identifiable natural persons, who have been served in the transit units in Catalonia, is subject to the principles and guarantees of the personal data protection regulations.

It should be noted that the data protection regulations will apply to the processing of personal data that may contain the requested information and that allow identifying, either directly or indirectly, without disproportionate efforts, specific natural persons.

Article 6 of the RGPD establishes that in order to carry out a treatment, such as the communication of data necessary to attend to an access request, it is necessary to have a legal basis that legitimizes the treatment, either the consent of the affected person (section 1.a)), whether it is one of the other legitimizing bases provided for, such as, that the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (section 1. c)).

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), data processing only may be considered based on the legal basis of article 6.1.c) of the RGPD when so established by a rule with the rank of law.

At the same time, according to article 86 of the RGPD: *"The personal data of official documents in the possession of some 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, body or entity in accordance with the Law of the Union or of the Member States that applies to it in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."*

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

Article 18 of Law 19/2014 establishes that *"people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (section 1).*

The mentioned article 2.b) defines public information as *"the information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions, including that which they supply the other obliged subjects in accordance with the provisions of this law".*

State Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

The information available to the requested Administration, relating to people served in the transit units, in the period from 2012 to 2021 requested by the claimant, is "public information" subject to the access regime provided for in the transparency legislation.

However, in accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically, and for the purposes of this report, it is necessary to assess whether the right to data protection of the affected persons can justify or not the limitation of the right of access to public information regulated in the LTC invoked by the person claiming .

III

To locate the information object of claim, it is necessary to mention article 16.1 of Law 11/2014, of October 10, to guarantee the rights of lesbians, gays, bisexuals, transgenders and intersexuals and to eradicate the homophobia, biphobia and transphobia (hereinafter Law 11/2014), according to which:

> *"1. The health system of Catalonia must incorporate the gender perspective and must take into account the specific needs of LGBTI people, in order to guarantee them the right to receive health care and enjoy health services in conditions equality objectives."*

In this context of guaranteeing the rights of the groups mentioned, specifically in the health field, article 16.2 of the same law establishes a series of measures that aim to incorporate into the health system comprehensive care for transgender people and intersex people , develop public health policies that ensure the right to health of LGBTI people, with the adaptation of established protocols, if necessary, and also establish specific strategies to deal with the specific health problems of these people collectives.

Given that the person making the claim refers to the number of people served in the "transit units", we mention Instruction 14/2017 of November 10, 2017, "Implementation of the Model of attention to trans people in the field of CatSalut" (www.catsalut.gencat.cat) which, in point 5.2.1, referring to primary care and community health, provides for the following:

> *"This care will be carried out according* ***to the Health Care Model for trans people*** *, and in accordance with the Framework Clinical Protocol. If, for reasons of demand, the deployment* ***of territorial reference traffic units is appropriate*** *, the care in these*

units will be carried out by the health professionals of the centers that meet the specific requirements established by the Department of Health and CatSalut, of in accordance with the aforementioned Framework Clinical Protocol."

The transit units are therefore the services of the public health system (CatSalut), especially designed to facilitate specific health care for people from the groups referred to in Law 11/2014.

Taking this into account, it is worth bearing in mind that, according to article 23 of the LTC:

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

In similar terms, article 15.1 of the LT, in its wording given by the final provision eleventh of the LOPDGDD, to which we refer.

According to the data protection regulations, personal data relating to health are: *" personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about their state of health; "* (art. 4.15 GDPR).

For the relevant purposes, the information relating to the fact that a natural person has effectively been attended to by the transit units, taking into account the regulatory context referred to, must be considered as health information of that person.

Therefore, we will have to start from the basis that, by application of article 23 LTC, this information could not be provided -unless there is the express and written consent of those affected-, in terms that allow, not already the direct identification of the affected persons (a possibility that, as can be seen from the request itself, the claimant does not request either), but also indirect identification without disproportionate efforts.

It should be borne in mind that the Administration complained of has already provided the complainant with aggregated information (therefore, without direct identification of those affected) by age group, and not year by year, as the complainant requests.

According to the data protection regulations, *" the principles of data protection must not be applied to anonymous information, that is to say information that is not related to an identified or identifiable natural person, nor to data converted into anonymous data in such a way that the interested party is not identifiable, or ceases to be so. Consequently, this Regulation does not affect the treatment of said anonymous information, (…)."* (considering 26 RGPD).

Thus, the principles of data protection do not apply to anonymous information, as long as the anonymization mechanism used effectively **ensures that the affected persons are no longer identifiable** , either directly or indirectly through other information complementary

According to article 70.6.a) of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC) , anonymization means :

"the elimination of the personal data of the natural persons affected contained in the information and any other information that may allow them to be identified directly or indirectly without disproportionate efforts, (...)."

Therefore, given the information claimed, what should be examined in the case at hand is whether, beyond the aggregate information that would have already been provided to the person making the claim, it would be consistent with the data protection regulations to give access to the same information, but aggregated at the level of people born in the same year, and not by age groups.

IV

As stated in the file, the claimed Administration partially assessed the request made and sent the claimant a list, broken down by year (from 2012 to 2021), with the following sections for each year:

"(Sex) *Assigned at birth (Female/Male/Unrecorded)";* as well as the number of cases - according to the sex assigned at birth), grouped by the following age groups: *"Age < 10 years; Age 10 to 14; Age 15 to 18; Age 19 to 24; Age 25 to 30 years; Age > 30 years."*

The information requested by way of complaint would be the same but broken down according to the age, year by year, of the people affected:

- Gender: man / woman / not listed
- Age: according to year of birth
- Year of attention in the traffic unit

The information claimed cannot be directly linked to identifiable affected persons.

However, as has already been said, the type of information claimed, if it indirectly allows the identification of the affected persons, should be considered as **health data** (art. 9.1 RGPD). Therefore, data deserving of special protection according to data protection regulations.

There can be no doubt, starting from the basis of the special protection for patients' health information, not only in the data protection regulations (art. 9 RGPD) but in the health sector regulations (Law 21/2000 , of December 29, on the rights of information regarding the patient's health and autonomy, and clinical documentation (art. 5), and State Law 41/2002 , of November 14, basic regulation of autonomy of the patient and rights and obligations in terms of information and clinical documentation (arts. 2.1 and 7)), which would not be adjusted to the data protection regulations, patient autonomy, and the specific protection of the right to privacy (Organic Law 1/1982, of May 5, on the protection of the right to honor, personal and family privacy and one's image), a communication of information that, despite being aggregated, could facilitate indirect identification of those affected without disproportionate efforts.

In addition, it should be borne in mind that the more detailed access requested by the claimant would affect information, to a large extent, of **minors.**

In this sense, the legal system establishes a reinforced protection of the rights and interests of minors, as can be seen from the specific legislation for the protection of children and adolescents, such as, among others, Law 14/2010, of May 27, of the rights and opportunities in childhood and adolescence (LDOIA), which establishes that the best interests of the child or adolescent constitute the basic principle of all law relating to these persons (art. 5.1 LDOIA)

Also the transparency legislation itself, establishes that the right of access to public information can be denied or restricted if the knowledge or disclosure of the information involves harm, among others, to the rights of minors (art. 21.1.e) LTC).

And not only that. The people of the affected group are people who, in certain cases, may suffer from **situations of special vulnerability,** as can be seen from Law 11/2014, already mentioned, and other corresponding regulations, which aim, precisely, to alleviate situations of vulnerability of the LGTBI group in different areas (educational, labor, health, etc.).

It is true that, in accordance with article 18.2 LTC, the right of access does not require citizens to state the specific reasons for which they want to access public information, but these may be relevant when deciding on the prevalence between rights (public interest in disclosure or rights of affected persons). However, the lack of clarification of the purpose of the request deprives an important element when weighing the interests at stake.

A priori, it cannot be ruled out that providing information by age group may also allow the intended purpose to be achieved, minimizing the risk of re -identification . For this reason, this Authority positively values the fact that the claimed Administration, *ad cautelam* , has provided the data grouped by age groups, in order to make re -identification more difficult .

In any case, it is also true that if the information provided in the form intended by the claimant (with age year by year) did not allow the identification of specific natural persons, the personal data protection regulations would not apply. For this reason, it becomes essential to determine whether the anonymization carried out through the aggregation including age year by year would be effective.

The risk of re -identification of a record occurs when it is possible to link a record of published data to the person who originated it.

CNS 15/2022, CNS 1/2022, CNS 26/2021 or CNS 12/2021, among others), the risk of re -identification of the people affected by a treatment is inherent in any anonymization technique , so it must always be taken into account that the privacy and right to data protection of those affected could be compromised.

In general, the crossing of information obtained, even if it has been anonymized , with other complementary information, can end up making a natural person identifiable.

As the Article 29 Working Group has pronounced, in its Opinion 5/2014, of April 10, 2014, available on the web: http://ec.europa.eu :

> *"(...) those responsible for the treatment must be aware that an anonymized set of data* ***can still carry residual risks for the interested parties*** *. Effectively, on the one hand, anonymization and re -identification are active research fields in which new discoveries*

are regularly published and, on the other hand, even anonymized data, such as statistics, can be used to enrich existing profiles of people, with the consequent creation of new data protection problems. (…).”

In Opinion 5/2014, the effectiveness and limitations of the different existing anonymization techniques are analyzed , taking into account the legal framework on data protection, and recommendations are formulated for the appropriate management of these techniques by of those responsible for the treatment.

To measure the risk of re -identification it is necessary to take into account, among others, the **number of people affected** . Specifically, the Opinion refers to *" aggregation or anonymity k"* (section 3.2.1): *"The techniques of aggregation and anonymity k have the objective of preventing an interested party from being singled out when it is grouped with at least one number k of people."*

For the purposes in question, precisely the number (k) of individuals, the reference set and the possible identifiers are key to determining whether or not an aggregation can be effective. Thus, the Opinion identifies the following as a frequent error of this type of anonymization :

"Losing some quasi-identifiers: When considering the anonymity k, ***one of the critical parameters is the threshold of k. The higher this value, the more privacy guarantees*** *we will get. A frequent mistake is to artificially increase the value of k by reducing the set of quasi-identifiers considered. (...).”*

As can be seen from the information in the file, it seems that the total number of cases of people affected during the 10 years requested would be 5418. It is not a very high number, if we consider that it is the number of cases of people served throughout Catalonia by a very specialized service (transit units).

As an example, given the table information contained in the file, in the first years of the chosen range the number of cases is very low. For example, in 2021, as regards women, in the bands of 0-10 years, 10-14 years and 15-18 years, there was no case, in the band 19-14 years 1 case, 4 cases in the 25-30 age group, and 2 cases in the over 30 age group.

Even if we take some of the years with the highest number of cases (which coincide with the most recent years, the number of cases is still relatively low. For example, focusing on women's cases, in 2021, in the 0-10 years group 25 cases, in the 10-14 years group 116 cases, in the 15-18 years group 207 cases, in the 19-14 years group 185 cases, in the 25-30 years group 101 cases, and in the over 30 age group 102 cases.

These figures, which are already low enough to begin with, would be even more so if, instead of providing aggregated information by age group, they were broken down by age year by year.

Thus, providing aggregated information from a low number of individuals (as it would be, obviously, if the information is provided year by year, as opposed to providing information by age ranges), in an analyzed universe that was also reduced (for example if the information were analyzed at municipality level) it would mean a greater risk of re -identification , given

that in municipalities with a small population there could be other added elements that could end up allowing re -identification .

Therefore, aggregation to avoid re -identification could only be effective if the whole of the analyzed population is a sufficiently large number of people.

For this reason, it must be taken into account that the set of population taken as a reference would be at least the entire population of Catalonia (without prejudice to the fact that other people may also be included who, despite not residing in Catalonia, have been attended to), which greatly reduces the risk of re -identification of the affected people. And the information is not provided for each traffic unit, but jointly for the whole of Catalonia

It should also be borne in mind that the only data that would be provided would be the age and the fact of having been cared for by these units. And it is not appreciated that, by offering this information at the level of all of Catalonia, there may be other information associated with it that may allow re -identification .

In the case we are concerned with, the information to be protected is the fact of whether a person has been served by a traffic unit. In principle, this is information known only to the person concerned, his closest circle and who has intervened in the assistance. Therefore, we can consider that re -identification should occur solely through the other two attributes (age and year of attendance).

This unless, of course, this circumstance was previously known (that a certain person or persons have been treated). In this case (in which the identity of all the people treated was previously known) the confirmation of previously known information would allow identification in a negative sense. In other words, in years with a very low incidence, direct knowledge of these cases through other channels would allow us to conclude a *contrario sensu* , that the rest of the people have not been treated for this reason. But with this operation, you would no longer be accessing any health data, since the fact that you have not been treated by these units cannot be considered health data.

From the point of view of the right to data protection, in this case there would not only be a low probability of re -identification , but also, the seriousness of an eventual re -identification would also be much lower, given that it would no longer be data from health and the risks that may exist for the right to privacy or the risks of stigmatization and discrimination of the affected people disappear .

It would be an equivalent situation, for example, to that of the age ranges in which it has already been confirmed (in the facilitated results) that there were zero cases, which would confirm that no one was taken care of.

And in this case, dealing with information that should not be considered as health data, the weighting (art. 24.2 LTC) between the public interest in knowing statistical data about the operation of the service, which allows to evaluate the work carried out by this service over the years, and the fact that it could be deduced that a certain person (in fact almost the entire population of Catalonia) has not been attended to in a certain year, should be decided in favor of access.

conclusion

From the perspective of data protection regulations, providing the information relating to the cases attended to the traffic units, aggregated by sex and age *"year by year, and not by age ranges",* offers sufficient guarantees to be able to an effective anonymization of the health data of the affected persons will be considered.

Barcelona, January 9, 2022