

Opinion in relation to the query made by a City Council in relation to a request for access to information by an elected member of the Corporation, regarding the identity of the City Council's tax debtors (natural and legal persons), amounts debts and concept of debt

A query formulated by a City Council is presented to the Catalan Data Protection Authority, in which an opinion is requested from this Authority in relation to a request for access to information by an elected member of the Corporation, regarding the identity of the City Council's tax debtors (natural and legal persons), amounts owed and concept of the debt.

After analyzing the consultation, which is accompanied by a report from the General Secretary of the City Council on the issue raised, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, the following is ruled:

I

(...)

II

The query refers to a request for access to information that a Councilor of the Corporation would have formulated, regarding the identity of the tax debtors of the City Council (natural and legal persons), amounts owed and concept of the debt.

According to the General Secretary's report, which accompanies the consultation, on December 5, 2022, an elected member of a municipal group would have addressed a request to the council, according to which:

"...having noted that...in the document "Intervention Report on the quarterly execution of the budget (3rd quarter 2022)", on its page 3, there is the amount of 8,042,586.00 € in terms of doubtful collection."

Consequently, and for the purposes of being able to know the data on the origin of this amount, the councilor would have asked that: *"The detailed breakdown corresponding to the amount of dubious payment that appears in the aforementioned report..."*.

According to the information available, the City Council would have sent the councilor *"the intervention report with the corresponding breakdown in which amounts of the provision for credit insolvencies are included in the Liquidation of the 2021 Budget, as well as detail of the base of the Pending Collection Rights at 12/31/2021, by seniority and economic nature."*

According to the report that accompanies the consultation, *"(...) access to the requested tax data was facilitated in order to clarify the amounts and concepts of doubtful receivables, with the corresponding breakdown, understanding that this access is part of the fundamental right*

of councilors to participate in public affairs and of their function of control and supervision of municipal government bodies."

According to the same report, on January 11, 2023, the spokeswoman of the same municipal group would have made a request for access to public information, in order to expand the information already mentioned (according to the information available, the information she would have received the other councilor of the same municipal group).

According to the report provided, the councilor would have requested "*the identity of the tax debtors (natural and legal persons), amounts owed and concept of the debt.*"

According to the said report, the councilwoman would have requested said access "*for the exercise of her control function of the municipal government bodies... with the corresponding duty of confidentiality and responsibility of reservation.*"

With all of this, according to the said report, "*the doubt arises as to whether access to the identity of the tax debtors of the City Council (natural and legal persons), amounts owed and concept of the debt can be considered, in the context presented in this report, which are essential data in order to guarantee the exercise of the control and inspection function of the municipal government bodies.*"

With the consultation in these terms, it is necessary to start from the basis that, according to article 4.1) of Regulation (EU) 2016/679, of April 27, general data protection (RGPD), they are personal data . *any information about 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;*

The information related to the debts contracted by a natural person, regardless of the particular nature of these debts, are personal data (art. 4.2 RGPD), subject to the principles and guarantees of the data protection regulations (RGPD, and Organic Law 3/2018, of December 5, on Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD)). All that information that refers to natural persons who are tax debtors of the City Council, is protected by these regulations.

The query refers to tax debtors of the City Council, individuals or legal entities, regardless.

For the purposes of this report, it should be noted that legal entities are outside the scope of the GDPR. Therefore, at the outset, access to the data of City Council tax debtors who are legal entities by Councilors of the City Council would not pose any problems from the perspective of the right to the protection of personal data.

Having said that, it is necessary to examine the possibility of giving councilors access to the requested information, specifically, the identity of the City Council's tax debtors, amounts owed and concept of the debt, specifically in relation to natural persons who are tax debtors of the City Council , which is what corresponds to analyze from the perspective of the personal data protection regulations.

III

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) of this article 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.

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.c) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment.

This reference to the legitimate basis established in accordance with the internal law of the Member States requires that the development rule, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 CE), as recognized by the article 8 of the LOPDGGD.

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 Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."*

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

The second section of the first additional provision of the LTC provides that *"access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law."*

Given that the case we are dealing with refers to the access of a councilor to information on tax debtors of the City Council, the provisions established by the regime legislation apply, for the purposes of granting or denying this access local, fundamentally, Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL), the revised Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28 (TRLMRLC), without prejudice to the fact that, in everything not provided for in these regulations, the LTC is additionally applied.

IV

As this Authority has done on previous occasions (among others, reports IAI 48/2019, IAI 52/2019, IAI 56/2019, IAI 3/2020, or IAI 41/2020 which can be consulted on the website <http://apdcat.gencat.cat>), the local regime legislation recognizes a right of access to all elected officials, regardless of whether they are in the government team or in the opposition, to the information available to them local corporation and that may be necessary for the exercise of the functions that correspond to them. As also mentioned in these reports, the right of access to municipal information belongs to councilors and not to the municipal group.

Thus, article 77.1 of the LRBRL establishes that *"all members of local corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the services of the Corporation and are necessary for the development of their function"*.

In the same sense, the TRLMRLC pronounces itself, by providing, in its article 164.1, that *"all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."*

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and that are necessary for the exercise of their functions, in accordance with repeated jurisprudence on this matter (SSTS September 27 of 2002, June 15, 2009, among others), is part of the fundamental right to political participation enshrined in Article 23.1 of the EC.

The elected officials take part in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis, study and information of the necessary antecedents that have the services of the City Council, for its control task and to document itself for the purposes of adopting decisions in the future (among others, STS of March 29, 2006).

However, this does not mean that this right of councilors is an absolute right. If it conflicts with other rights, it will be necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

This is recognized by the local legislation itself, in regulating the conditions for the exercise of the right of access to municipal information by the members of the corporations (art. 164 TRLMRLC sections 2 and 3), which establishes, as a possible basis for deny with reason the request for information, that "the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's own image" (section 3, letter a)), but obviously access could also be denied when other fundamental rights may be affected such as the right to the protection of personal data (Article 18.4 EC).

Since the exercise of the right of access of the councilor requesting the information could lead to a limitation of the fundamental right to the protection of personal data, it is necessary to determine whether it is a proportional limitation, since, according to reiterated doctrine of the Constitutional Court, the limitation of fundamental rights can only occur in a proportionate manner (SSTC 11/1981, 57/1994, 66/1995, 11/2006, 206/2007, among others).

V

In view of the provisions of the Revised Text of the Local Finance Law, approved by Royal Legislative Decree 2/2004, of March 5 (TRLRHL), on local taxes (arts. 57 et seq.), it can be understood that the City Council processes certain information on natural persons who are liable to pay taxes in relation to the management, settlement and collection of the various local entity taxes (art. 2.1.b) TRLRHL and art. 105 et seq. LRBRL). It is worth noting that the information requested could refer to tax debtors for non-payment of taxes (for example, IBI debtors), fees (such as in relation to the granting of planning licenses), special contributions or public prices

It should be remembered that the local legislation does not require elected officials that, in order to access information held by the corporation, they must explain or substantiate the purpose of your request, given that the reason for your request must be understood as implicit in the exercise of the control and inspection functions granted by the regulations.

As has been pointed out, the councilor would have requested the information referred to (identity of tax debtors, amount and concept) "for the exercise of her function of controlling the municipal government bodies" (art. 22.2.a) LRBRL).

It is clear that, in the area that deals with us, the purpose of the proposed access to personal and individualized information of the debtors who are physical persons, must find its basis in said control functions. The actions of the governing bodies and the municipal administration in matters of management and collection of public revenues directly affect the execution of the revenue budget and the general statement of accounts, and the result of this action has an impact on the budgetary, economic and financial situation of the corporation.

In addition, it should be borne in mind that in budgetary matters, the Plenary is responsible for approving the budget and its modifications. According to article 22.2.e) of the LRBRL, it corresponds to the municipal plenum:

"The determination of own resources of a tributary nature; the approval and modification of the budgets, and the disposition of expenses in matters of their competence and the approval of the accounts; all this in accordance with what is provided in the Local Taxes Regulatory Law."

We refer, on this, to articles 167 and 169 TRLRHL.

According to article 207 TRLRHL: *"The Intervention of the local entity will send to the Plenum of the entity, through the presidency, information on the execution of the budgets and the movement of the treasury for independent and auxiliary budgetary operations of the budget and its situation, in the terms and with the periodicity that the Plenary establishes."*

Finally, it is up to the Plenary to approve the General Account of the corporation, drawn up by the Comptroller and subject to a report by the Special Commission of Accounts of the entity, constituted by members of the different political groups of the corporation (art. 212, app. . 2 and 4 TRLRHL). The general account reflects the economic, financial and patrimonial situation, the economic and patrimonial results, and the execution and liquidation of the budgets.

As this Authority has agreed, among others, in Opinions CNS 39/2017, or CNS 81/2016, among others, in the context of the withholding of public accounts, it should be noted that access by councilors to the information related to the state of accounts of the local entity, could be requested within the special commission of accounts, through articles 212.2 TRLRHL and 58 TRLMLC, but also through the Plenary, for the way of article 212.4 TRLHL in relation to article 77.2 a) LRBRL.

Thus, for the exercise of the functions of control and inspection of the governing bodies, in relation to the role of political control that the regulations attribute to the plenary session of the corporation, to whom it corresponds, in the last instance, the approval of the account in

general, the councilors must be able to have the information, data, accounting documentation and justification of the different statements of the accounts - in this case of the income -, which allows them to evaluate what the performance of the municipal administration has been, specifically, with respect of the rights recognized in favor of the corporation that are listed as "pending collection", information, this, subject of the request on which the query is formulated.

Thus, it seems clear that the councilors must be able to verify the monitoring and control that the governing bodies and the municipal administration carry out on the debt balances pending collection, regardless of the origin of the debt.

However, we cannot ignore that a certain evaluation of the administrative action regarding the management and collection of these debts, in terms of effectiveness and results, could be done, a priori, without having to have generalized access to the details of said debtors list (name and surname, concept and amount). In other words, we do not rule out that, in some cases, the information may be sufficient as, based on the available information, it would have been provided in the case at hand to the councilor who initially requested the information.

In any case, if the aim is to have information that allows you to verify whether possible anomalous or irregular situations have occurred in the management and revenue collection process with respect to certain people, it is necessary to determine whether access to the requested data would remain justified.

VI

Having defined what would be the legitimate functions of councilors in relation to the management of public resources, and bearing in mind that information of a tax nature is requested, it is appropriate to analyze its specific regulatory framework.

Article 2.2 of the TRLRHL, provides that "**for the collection of taxes and amounts that, as income of public law, such as non-taxable public property benefits, public prices, and fines and pecuniary sanctions, the hacienda must receive of the local entities in accordance with the provisions of the previous section, said Hacienda will hold the legally established prerogatives for the State Treasury, and will act, as the case may be, in accordance with the corresponding administrative procedures.**"

Thus, the local tax authorities have, for the collection of taxes and other revenues under public law, the same prerogatives that Law 58/2003, of December 17, General Taxation (LGT) attributes to the State Treasury.

Specifically, with regard to the data and information obtained by the Municipal Treasury, the article

95.1 of LGT provides that:

*"1. The data, reports or background obtained by the Tax Administration in the performance of their functions have a reserved character and may only be used for the effective application of the taxes or resources whose management has entrusted and for the imposition of the sanctions that proceed, without being able to be transferred or communicated to third parties, unless the transfer has the purpose of:
(...)"*

3. The tax administration will adopt the necessary measures to guarantee the confidentiality of tax information and its appropriate use. How many authorities or officials have knowledge of these data, reports or antecedents will be bound to the strictest and most complete secrecy regarding them, except in the cases mentioned. (...)."

In this way, by application of the LGT, the personal data processed by the City Council, in relation to tax management, they are reserved in nature and can only be used for its effective imposition. It is clear, therefore, that the applicable regulations protect certain information related to tax payers and conditions its access and treatment for certain purposes.

In any case, even though this article 95 of the LGT establishes the prohibition of communicating information of a tax nature to third parties other than those established in its section 1, it should be remembered, in line with the criterion maintained by this Authority, that the councilors are an integral part of the City Council (article 19.1 LRBRL), so they are not properly a "third party" to the relationship between the interested party (the natural person holding the data) and the City Council itself.

However, the fact that councilors' access to information should not properly be considered as a communication, does not exclude that it must comply with the principles of data protection, in particular, the principle of limitation of treatment (art. 5.1.b) RGPD).

Thus, the purpose of the access in the analyzed case should not be the verification of possible tax irregularities on the part of the taxpayers - a question that would correspond to the municipal tax inspection bodies and, where appropriate, to the courts - but it must have for the purpose of controlling administrative action in the field of management and collection of rights recognized in favor of the corporation, in order to be able to detect if any irregularity has occurred in the field of this activity, the responsibility of which corresponds in any case to the governing bodies of the corporation.

From this perspective, access to the list of tax debtors is part of the legitimate functions of control and inspection legitimately attributed to councillors. Having said that, and under the principle of purpose limitation (art. 5.1.b) RGPD), the processing of the data to which the councilor has access cannot have any other purpose than the strict fulfillment of the specific function for which this access is provided.

VII

According to the information available, the information requested refers precisely to tax debtors with overdue and payable debts that have not been satisfied (the amount regarding which the councilor in the first instance would have requested information, is the budget item relating to an amount in "doubtful collection concept").

At the outset, as has been pointed out, the councilors, in the exercise of their control and inspection functions, must be able to verify the monitoring and control that the collection bodies carry out on the balances pending tax collection, specifically, of overdue and unsatisfied debts (arrears).

Given the information we have, it seems that the query would refer to those debts that are due and are due, or that, despite not being due due to being time-barred, are accounted for, for budget purposes, as pending collection, regardless of the budget year in which the debt was recognized.

Those debts that are in a voluntary payment period, or debts whose payment has been deferred or in installments (art. 65.1 LGT), would be excluded from this information - to which the query refers -.

Access should therefore be considered with respect to those people with overdue and demandable debts that have not been satisfied, and that should be found in an executive way, without having been written off, as uncollectible, by prescription or due to the occurrence of any other cause of termination.

With regard to uncollectible debts or rights, it should be borne in mind that, according to article 193.1 TRLRHL: *"In case of liquidation of the budget with negative treasury balance, the Plenary of the corporation or the competent body of the autonomous body, as appropriate, they must proceed, in the first session they hold, to the reduction of expenses of the new budget by an amount equal to the deficit produced. The said reduction can only be revoked by Plenary agreement, at the proposal of the president, and prior to the Comptroller's report, when the normal development of the budget and the situation of the treasury allow it."*

Likewise, according to article 193 bis of the same TRLRHL, relating to rights that are difficult or impossible to collect (to which the query seems to refer, given the information available), the following is provided:

*"Local Entities must inform the Ministry of Finance and Administration
The result of the application of the criteria is published already in plenary, or an equivalent body
determinants of the rights of difficult or impossible collection with the following minimum limits:*

*a) The pending collection rights settled within the budgets of both
previous years to which the liquidation corresponds, will be reduced, at least, by 25
percent.*

(...)."

According to article 103 of Royal Decree 500/1990, of April 20, implementing Law 39/1988 on local finances:

"1. The remainder of the Treasury will be quantified in accordance with what is established in the previous articles, deducting the rights pending collection that are considered difficult or impossible to collect.

2. The determination of the amount of rights that are considered difficult or impossible collection can be done either individually or by setting a fixed percentage.

3. To determine the rights of difficult or impossible collection must be held in

it takes into account the age of the debts, the amount of them, the nature of the resources in question, the collection percentages both in the voluntary period and in the executive way, and other valuation criteria that are established in a weighted manner by the Entity local

4. In any case, the consideration of a right as difficult or impossible collection will not imply its cancellation nor will it result in its deregistration.”

It follows from these regulations that there are different factors to take into account when determining these types of outstanding debts (difficult or impossible collection rights), and that information must be provided to the Plenary.

Given these forecasts, we cannot rule out that, in some cases in which it is either impossible to enforce the debt, or the inactivity of the administration to enforce it, it may be relevant for control purposes eventual irregularities produced in the tax collection procedure, the knowledge not only of the amount and concept of the debt, but also of the identity of the debtor.

This could be the case, for example, in cases where the amount of a debt is particularly significant, or in the event of other circumstances.

However, in the case at hand, it does not seem clear enough that it is necessary, for the purposes of the councilors' control functions, to know, in addition to the concept and amount of the debt, the identity of each debtor in relation to the referred budget item.

At the outset, it would seem that providing detailed information on the debts, indicating the reason and amount, and indicating whether it affects a legal entity or a natural person, could provide more detailed information than has already been provided, which allows to know what the circumstances of each debt may be, without the need to identify, in all cases, the people affected. Providing information in these terms (with more detail and breakdown than has already been provided, without identifying those affected), could allow, for example, if the City Council has taken into account the provisions of the aforementioned regulations for the purposes of qualify these debts as "doubtful collection".

In this sense, it must be remembered that the purpose pursued is the control of the actions of the Public Administration in the management of these debts, and not the control of the actions of the natural persons who hold certain debts.

In addition, in the case at hand, it must be borne in mind that, although the overall amount of debts collected is significant enough, this does not imply that the amount of each and every debt that is part of the overall calculation is also significant. In any case, by indicating the amount and the reason for the debt in each case, it seems that anomalous situations could already be detected, if applicable (for the type of debt and the associated amount), without it being necessary or, at least, sufficiently relevant, to identify all the natural persons affected.

In addition, from the perspective of data protection, information related to a person's debts is information of an economic nature that may affect their socio-economic sphere, although it does not constitute information that deserves a special protection for the purposes of data protection regulations (art. 9 RGPD).

It should be added that for the purposes of the principle of minimization (art. 5.1.c) RGPD), the data subject to treatment must be adequate, relevant and limited to the purpose of the treatment.

From the moment when it may be sufficient to know the reason, the amount, and the natural person status of the debtor, for the purposes of detecting possible anomalies or irregularities, to comply with the councilors' control functions, it does not seem necessary to grant access, also, to the identity of those affected. More, bearing in mind that, as we have pointed out, giving access to this information could mean disclosing the socio-economic circumstances of specific natural persons, which may not be relevant to the intended control effects.

Thus, it seems that the purpose of control by the councilors could also be achieved in this case by applying pseudonymization mechanisms, so that the physical persons affected are not identifiable.

Article 4.5 of the RGPD defines pseudonymization as the processing of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that this information is recorded separately and is subject to technical and organizational measures aimed at ensure that personal data is not attributed to an identified or identifiable natural person.

The information relating to the reason and amount of the debt could be provided, without identifying the natural persons affected, simply indicating that the debtors are natural persons (individuals), or if applicable by adding a reference code, provided that this cannot be associate the affected person.

The possibility of giving access to information with pseudonymised data would, in the case examined, allow the councilor to be provided with more precise information on debt defaults, in terms fully respectful of the aforementioned minimization principle.

This, without prejudice to the fact that, once the information is known in the terms indicated, in some cases it may be pertinent to also know the identity of the affected, a possibility that would require a specific weighting, taking into account the aforementioned data protection principles.

VIII

Finally, it should be remembered that councilors' access to personal data that is carried out due to the functions entrusted to them as such, must be governed, apart from the duty of reservation imposed by the local regulations (article 164.6 TRLMRLC), by the principle of purpose limitation (article 5.1.b)) and by the principle of integrity and confidentiality (article 5.1.f)) established in the RGPD.

Thus, article 164.6 of the TRLMRLC provides that *"the members of the corporation must respect the confidentiality of the information to which they have access by virtue of their position if the fact of publishing it could harm the interests of the local entity or third parties."*

Likewise, in accordance with the aforementioned purpose limitation principle, any use of personal information subsequent to access by councilors should also be based on a

legitimate purpose. Otherwise, we could be faced with a treatment not adjusted to the RGPD, even though the access to personal data was initially considered legitimate.

In addition, this purpose in which the subsequent processing of personal data by councilors could be framed should not be incompatible with that which at the time would have justified the access, that is the exercise of the legally attributed functions .

For its part, in accordance with the principle of integrity and confidentiality (Article 5.1.f)) RGPD *"personal data will be treated in such a way as to guarantee an adequate security of personal data, including protection against non- authorized or illegal and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures."*

conclusion

The data protection regulations do not apply to legal entities and, therefore, these regulations would not prevent councilors from accessing information of legal entities that are tax debtors of the City Council.

Councilors' access to information relating to the amount and reason for doubtful debts could be justified in the control and inspection functions legally attributed to councilors. This, without the need to provide the identity (name and surname) of all the natural persons affected, for the purposes of the minimization principle.

This, without prejudice to the fact that, once the information is known in the terms indicated, in some cases it may be pertinent to also know the identity of the affected, a possibility that would require a specific weighting, taking into account the aforementioned data protection principles .

Barcelona, March 27, 2023