

Opinion in relation to the query made by a City Council regarding a citizen's access to information relating to the provision of drinking water supply services in an urban development in the municipality

A letter from a City Council is presented to the Catalan Data Protection Authority, in which it considers whether it can provide a citizen with the information requested by her in relation to the provision of the drinking water supply service in a urbanization of the municipality.

Specifically, said request includes the following information:

- Copy of all receipts paid to water users of the urbanization corresponding to the period of time between May 2022 and February 2023.
- Accounting registration system implemented for the accounting of economic management during the substitution in supply.
- Copy of the user register and the contract.

The consultation is accompanied by a copy of the Mayor's decree by means of which emergency measures are adopted to guarantee the non-interruption of the supply of drinking water, and the salubrity of the same, to the urbanization in question.

Having analyzed the query and the documentation that accompanies it, and in view of the current applicable regulations, this Legal Advice advises the following:

I

(...)

II

In the consultation it is stated that a citizen has addressed a request to the City Council in which, claiming the status of an interested person, she requests access to several documents related to the provision of the drinking water supply service in an urbanization of the municipality, specifically:

- Copy of all receipts paid to water users of the urbanization corresponding to the period of time between May 2022 and February 2023.
- System of accounting registration implemented for the accounting of the economic management during the substitution in the supply.
- Copy of the user register and the contract.

The City Council states that the urbanization in question does not actually have a public drinking water service, but that the supply has been carried out by private companies as an economic activity. In this sense, he mentions the act of urban reception of services and works signed between the City Council and the owners promoting the urbanization in 1997, in which this was agreed upon.

However, he points out that the City Council is currently managing the service through a procedure of emergency measures to guarantee the non-interruption of the supply of drinking water to the urbanization and its healthiness, which has meant the temporary replacement of the private borrower in this supply. He points out that, for these purposes, he has the authorization of the people who own the wells - among them, the person requesting the information - to access and use the facilities of their property.

It is also agreed that the applicant has filed an administrative contentious appeal against the dismissal of the appeal filed against the mayor's decree by means of which the said emergency measures procedure is resolved, of which a copy is attached copy

In addition to all this, the City Council requests the opinion of this Authority on the possibility of giving the person requesting the documentation to which reference has been made.

III

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 movement of such data and which repeals Directive 95/46/CE (RGPD), defines personal data as *"all information about an identified or identifiable natural person (the "data subject"). 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, will be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person "* (article 4.1)).

In turn, the RGPD defines data processing as *"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, query, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction."*

The access or delivery of certain documentation, which contains personal data, related to the provision of the drinking water supply service in the urbanization of the municipality to which the request for information refers constitutes data processing that must comply with the principles and guarantees established by the RGPD.

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 article 6.1 of the same RGPD. Among these, it is interesting to highlight in the present case the one established in

section c), regarding that the treatment will be lawful when *"it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment."*

It must be taken into account that, as is apparent 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 the guarantee of digital rights (LOPDGDD), data processing can only be considered based on the legal basis of article 6.1.c) of the aforementioned RGPD when it is established by a rule with the rank of law.

IV

Regarding the concurrence of a legal provision that legitimizes access to the information requested in the present case, the provisions of Law 19/2014, of December 29, on transparency, access to information should be taken into consideration public and good governance (LTC).

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."*

It is worth noting, at this point, that according to article 3.1 of the LTC this law is not only applicable to public administrations and their instrumental bodies, to statutory institutions and public law corporations (to which the letters refer a), b), ic) of this same article 3.1 LTC) but also:

"d) To natural or legal persons who exercise public functions or administrative powers, who provide public services or who receive public funds to function or to carry out their activities for any legal title.

e) To natural or legal persons who carry out activities legally qualified as services of general or universal interest."

However, article 3.2 of the LTC provides that, in these cases (those of sections 1.d) and i) mentioned), *"the compliance with the obligations established by this law must be made effective by the responsible Administration ."*

In order to enable the fulfillment of these legal obligations, the same article 3.2 of the LTC imposes on these subjects the obligation to inform the responsible Administration about (only) *"the activities directly related to the exercise of functions public services,*

the management of public services and the collection of public funds, and of the activities that remain within the supervision and control of the Administration in the case of services of general or universal interest", as well as on "the remuneration received for (their) managerial positions" only when "the business volume of the company linked to activities carried out on behalf of the public administrations exceeds twenty-five percent of the general volume of the company".

Therefore, the LTC includes legal entities providing public services in its scope of application, although it obliges the Administration responsible for their protection to comply with the obligations established in terms of transparency, both those derived from active advertising such as those arising from the exercise of the right of access to public information. And, for this purpose, said entities must deliver to the responsible Administration the information referred to in article 3.2.

In the present case, according to the Mayor's Decree attached to the consultation, we are facing a scenario in which the drinking water supply service to the urbanization would be provided by the City Council in place of the private borrower, while it lasts the emergency that justifies the replacement or supply is assumed as a public service.

With regard to this last point, it must be taken into account that the Government of the Generalitat has definitively approved the dossier of implementation and establishment under a monopoly regime of the domestic potable water supply service in the municipality (...), reserved to local entities by article 86 of Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL), adopting direct management through a wholly public capital company, as a mode of providing the service (...).

Despite the legal establishment as a public service, this would not be effectively implemented (from the information available, it seems that it would remain pending the establishment of the wholly public capital company) and in the face of the lack of own means to provide the supply service to the urbanization during the agreed replacement, the City Council would have provisionally entrusted the provision of the service to a company, which it considers a municipal service contractor.

With regard to the company that is providing (provisionally) on behalf of the City Council a municipalized and therefore public service, for the purposes that are of interest in this opinion, it is an indirect management of a public service, the which determines the application of the legally established forecasts for said service.

In addition, it cannot be overlooked that, in accordance with local legislation, the domestic supply of potable water is a responsibility of the municipalities (article 25.2.c) LRBRL), it is legally configured as a minimum mandatory service for all municipalities, regardless of their population (Article 26.1.a) LRBRL), and therefore as a right of residents (Article 18.1.g) LRBRL), and is currently also legally qualified as an essential service reserved by law to local bodies, which can agree to provide it under a monopoly regime (article 86.2 LRBRL), as has happened in the present case.

To point out that the regulations on transparency include, as subjects obliged to provide information to the responsible public administrations and among others, legal entities that provide " *services of general or universal interest*" and in this concept expressly includes the activities aimed at the supply of water (article 8.1.d) RLTC).

The applicant requests the liquidated receipts from the water users of the urbanization for the period between May 2022 and February 2023; the user register and supply contracts; and also the accounting record system implemented by the company relating to the replacement.

All this information can be considered information directly related to the management of the public service by the company in charge of providing it (article 3.2 LTC), so it must be given to the City Council or can be claimed by it, for the purposes of fulfilling their obligations in terms of transparency.

In any case, given that, as we will see, this set of information contains or may contain personal data (article 4.1 RGD), it is necessary to examine, next, the eventual access of the person requesting to said public information.

v

Taking into account the type of information requested, which has been mentioned before, it does not seem likely that it will contain particularly sensitive information such as that contained in article 23 of the LTC, therefore, for the purposes of granting access, it would be necessary to make a reasoned weighting between the public interest in the disclosure of the information and the rights of the affected persons, as provided in article 24.2 of the LTC:

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

It should be borne in mind that, although the exercise of the right of access is not subject to motivation and does not require the invocation of any rule (article 18.2 LTC), the purpose of access is one of the circumstances established by to said weighting (article 24.2.b) LTC).

In the present case, there is no written request for access addressed to the City Council or information on the motivation that would justify the interest to be satisfied by obtaining the requested information. In the consultation it is noted, however, that the applicant would have added in his request to his status as an interested person.

In accordance with article 53.1.a) of Law 39/2015, of October 1, on the common administrative procedure of Public Administrations (LPAC), interested persons have the

right to access and obtain copies of the documents contained in the procedures in which they have this condition.

This circumstance, if concurred, could justify a different treatment with regard to the possibility of accessing certain personal information of the documentation included in a file to which it would correspond if it were a third party unrelated to the procedure.

In accordance with article 4.1 of the LPAC, they are considered to be interested in the administrative procedure:

- "a) Those who promote it as holders of individual or collective legitimate rights or interests.*
- b) Those who, without having initiated the procedure, have rights that may be affected by the decision that is adopted therein.*
- c) Those whose legitimate interests, individual or collective, may be affected by the resolution and who appear in the procedure until a definitive resolution has been reached."*

As has been seen, in this case the City Council would have carried out a procedure of emergency measures to guarantee the non-interruption of the supply of drinking water to the urbanization, as well as its healthiness, which would have entailed the temporary replacement of the private borrower in this supply.

According to the information provided, the applicant would have been qualified as a private borrower of the supply to the development by the body with powers over taxation in matters of water, a condition confirmed by the City Council itself, being, for therefore, the subject whom the City Council replaces due to an emergency.

Although, in relation to this procedure, the applicant would have the status of interested party, it must be borne in mind that the information requested, which is properly linked to the provision of the service by the company to which the City Council instructs to take care of it during the replacement (user register, contracts, liquidated receipts and accounting of the service during the replacement), it would not be part of this procedure. Therefore, he could not be granted the right of access to the disputed information on the basis of his status as an interested person.

On the other hand, it is not known that, as of the date of this opinion, the temporary replacement of the private borrower in the water supply has ended. This circumstance, if it had occurred, could hypothetically justify the request for information in the eventual assumption of the applicant's obligations as a private borrower of the service, if this were the reason for the end of the substitution, and provided that the implementation of the municipal service has not become effective. But, since, as has been said, there is no evidence that this has taken place, the examination of the feasibility of the access requested by the applicant based on this possible is not considered the subject of this opinion motivation

In the absence of more specific information about the intended objective, access should be understood as framed within the purpose of the transparency law itself, which, according to its article 1.2, is "to establish a system of relationship *between people and the public administration and other obliged subjects, based on the*

knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and responsibility in public management."

The information requested includes a copy of the user register, supply contracts and receipts paid to users for the period between May 2022 and February 2023. This set of information will include, among others, the identification and contact details of the people subscribed to the service, the details of the property subject to supply, their domicile for notification purposes in case it differs from that of the supplied property, their current account number in case of domicile the receipts, the consumptions made, the possible bonuses on the rate, the taxes that the users are obliged to pay and the amount paid by them.

From the point of view of data protection, the interference that the disclosure of this personal information can entail in the private sphere of the users is clear.

The address alone constitutes data that allows the location of the person it refers to, with respect to which it is necessary, in general, to guarantee its confidentiality, since the security of this person could be threatened and/or that of his goods.

It should be borne in mind that the risk to the safety of the people affected is one of the circumstances expressly provided for by the LTC for weighting (Article 24.2.d) LTC).

To this it must be added that access to the data linked to the taxes that users must pay (water rate, VAT and/or other municipal fees) would entail the communication of data of a tax nature.

Article 95 of the Law 58/2003, of December 17, general tax (LGT) establishes the reserved nature of information of a tax nature and regulates the different cases of exception to this limitation (taxed cases of transfer of data to other administrations or authorities for the exercise of the respective powers), among which, it must be said, the possibility of handing it over to individuals is not foreseen.

However, this does not *necessarily* mean that citizens cannot access tax information, given that the provisions on the right of access of the transparency legislation are equally applicable, although, in the weighing between opposing interests to which refers to article 24.2 of the LTC, the special nature of this type of information must be taken into account.

On this issue, mention should be made of STS 257/2021, of February 24 (FJ III):

"(...) the LGT and singularly, its article 95 - in which the negative decision is based enshrine a rule or general guideline for the reservation of "data with tax significance" in the scope of the functions of the Tax Administration - the management and application of taxes - but they do not allow us to claim that they contain a complete and alternative regulation on access to information that involves the displacement of the general regime provided for in Law 19/2013, on Transparency, a basic rule applicable to all Administrations public (...)

The General Tax Law must be interpreted in the entirety of the legal system and in the light of the new guarantees introduced in Law 19/2013, on Transparency, which leads to the conclusion that its regulation does not exclude or foresee the possibility that it can be collected information (...) when the data held by the Administration may be necessary for citizens to assert their rights, or may be informed of public action, information that must conform to the limits set by the Transparency Law itself establishes in its article 14 and the data protection of article 15.”

Likewise, it is necessary to take into account the possible bonuses that people who subscribe to the service may have received, in particular, those who respond to situations of particular vulnerability. This type of information, despite not being properly considered a special category of data (Article 9 RGPD), should also be the subject of a special reservation or confidentiality.

It is also not appreciated what impact the knowledge of other personal data of the users such as the contact details and/or the current account number can have for the purpose of controlling the activity of the public authorities (or of the companies who act on their behalf) in this area of action.

Given this, with respect to this amount of information, making a general weighting based on the information available, it does not seem that, from the point of view of data protection and for the purposes of transparency, the right of access of the applicant to the disputed documentation.

Apart from the answer to the two previously mentioned questions, the request for information also includes the accounting registration system implemented by the company for the accounting of economic management during the replacement of the private borrower in supply. It is not specified what is meant by the accounting registration system, but if it is a management tool, it is not appropriate to evaluate access or not to this information from a data protection point of view, but rather should evaluate whether or not confidentiality, industrial secret or contractual provisions have been established. On the contrary, if it is understood that this is the information on the movements of resources (expenses and incomes) recorded during the operation of the service in the replacement, it must be resolved under the protection of the provisions regarding the protection of data

A priori it would be information of an economic nature but according to the degree of concreteness of the settlements it cannot be ruled out, at least with regard to the income part, that it could also include personal information referring to the people using the service (for example, settlement of the money entry corresponding to the payment of the receipt turned over to the user identified with his first and last name).

In the resolution of the emergency measures procedure, it is agreed that the totality of the costs derived from the replacement, minus the income received from the users, are jointly and severally borne by the private borrowers - among them the applicant - , who will be settled monthly based on the proposal made by the company that provides the service once verified by the municipal intervention (section 4.3.5 Mayor's Decree).

Taking this into account, it could be thought that the request could be motivated by a possible disagreement on the amount that the applicant must assume for this concept as an obligated subject. If this is the case, and always depending on how the result has been presented, it cannot be ruled out that it could be justified to have more detailed information on the expenses produced and the income provided by the exploitation that would allow the person alone bidder to verify the adequacy of the calculation made and that he must assume. In any case, it does not seem that, for these purposes, it was necessary to have the personal information that, if applicable, could be included in the accounting register, it being sufficient to have a priori aggregated information.

In addition to all this, given that the request is made in a generic way (for the entire period of the replacement) and not in relation to one or several specific monthly payments over which there could be some controversy, it does not seem that we are facing of this specific case.

Therefore, in the absence of more information, it should be considered that the request would also fall within the LTC's own purpose.

For the control of the City Council's actions in this area of activity and the management it carries out, it cannot be ruled out that any citizen, not only must be able to know the cost or the final expense involved in the provision of the service of potable water supply to the urbanization, but even also detailed information on this cost that allows you to see what it is responding to and to be able to verify its adequacy.

This, however, does not mean that knowledge of this information must necessarily lead to access to the implemented accounting registration system. In any case, taking into account the above, to the extent that it is information integrated into this system, as data of an economic nature and does not include personal data, there should be no problems from the side of data protection to make it easier for the applicant, unless there is another limit other than the protection of personal data that prevents it

conclusion _

In view of the information available, it would not be justified for the person requesting access to a copy of the register of users of the drinking water supply service in an urbanization of the municipality, of the supply contracts and of the receipts settled between May 2022 and February 2023, nor to the personal data that may appear in the accounting register system implemented during the replacement in the provision of this service. There would be no inconvenience, if applicable, in providing you with economic information, broken down and aggregated on the cost derived from the provision of the service, in the terms indicated.

Barcelona, April 11, 2023

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