

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim submitted by a journalist for the denial of access to information on the holders of houses for tourist use

The Commission for Guaranteeing the Right to Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted by a journalist for denial of access to information about people who own homes for tourist use.

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 Counsel, I issue the following report.

Background

1. On October 28, 2022, a journalist addresses a letter to the department responsible for business and work in which he requests access to public information in the following terms:

"The Department (...) publishes on its website the lists of companies and tourist establishments sorted by municipality and address that are recorded in the Department's IT database: https://empresa.gencat.cat/ca/treb_ambits_actuacio/turisme/tourism_professionals/emo_empresas_establimos_turisticos/registreturis-me-catalonia/listat-establimos/

In this link , you can download the excel titled 'Housing for tourist use'. In this Excel, there is a list of all the houses for tourist use in Catalonia, with a first field called 'Registration Number'.

The reason for this request is to obtain a list of all the tourist accommodation registered in the register, associating with each registration number the name of the company or natural person that manages each license for each tourist flat. In other words: for each "HUTB- xxxx " reference , associate the name of the company that owns it.

In the case of natural persons, if it is not possible to provide the name, associate each natural person's name with a control number that allows quantifying how many licenses are managed by each specific natural person."

2. On November 25, 2022, the department resolves the request for access to public information mentioned above in the following sense:

"1. Partially estimate the request for access to public information submitted on 10/28/2022.

2. Provide the aggregated information relating to the distribution of homes for tourist use, both in terms of natural person and legal person owners, which are contained in annex 2 and annex 3 of this resolution."

Annex 2 includes a table with the following fields: number of natural persons, number of HUTS (Housing for tourist use) per natural person and total HUTS.

Annex 3 includes a table with the following fields: number of legal entities, number of HUTS (Housing for tourist use) per legal entity and total HUTS.

3. On December 25, 2022, the journalist filed a complaint with the GAIP against the department for denying access to the requested public information.

In the letter that accompanies the claim, he states, among other issues, that the Department has provided him with a series of aggregated and anonymized information that he considers insufficient. He considers that, if it is not possible to know the names of the natural persons affected, the information associated with a reference indicator could be provided or, in any case, in a more detailed manner, mentioning a possible territorial segmentation by municipalities or, in the case of Barcelona, by neighborhoods. And he requests the GAIP to *"consider the claim made and decide that I have the right to access the requested information in its entirety."*

4. On January 5, 2023, the GAIP forwards the claim to the department, informing it of the processing of the mediation procedure at the express request of the complaining party, and requiring it to issue a report in which the basis of their positions, as well as the complete file relating to the request for access to public information, the identification of the third parties affected by the requested access, as well as the person or persons who will represent them in the mediation session.

5. On January 24, 2023, the department sends to the GAIP a copy of the file relating to the access request that is the subject of this claim. I am also sending you the report issued by the Information Unit on the Department's position in this regard.

In this report, the Department justifies the delivery of aggregated information on the physical persons who own the housing for tourist use on the basis of the data protection limit provided for by article 24.2 d) of Law 19/2014, of 29 of December, on transparency, access to public information and good governance (LTC); and, with regard to legal entities, on the basis of the limit of public security provided for in the article 21.1.a) of the LTC. He adds, regarding the request of the person requesting to deliver the information by associating it with a control code that allows quantifying how many licenses each person manages, that this action would offer the same information that has already been provided.

6. On January 31, 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 the LTC, which regulates the complaint against resolutions regarding access to public information, establishes that if the refusal is based on the protection of personal data, the Commission must request a report to 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 (article 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 repeals Directive 95/46/EC (General Data Protection Regulation, 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

The object of the claim is, as can be seen from the statements of the claimant and from the set of information contained in the file, access to a list of all the housing for tourist use registered in the Tourism Register of Catalonia, associating with each registration number the name of the holder (company or natural person) of each activity license.

Law 13/2002, of June 21, on tourism in Catalonia, defines tourist subjects, in its article 2.b), as " *the set of natural or legal persons who, as service providers, promoters of the*

development of the sector or of specific activities, workers or users, have a direct relationship with the tourism sector."

And it also defines homes for tourist use, in its article 50 bis, as *"homes that are ceded by their owner, directly or indirectly, to third parties, in exchange for financial consideration, for a seasonal stay, under conditions of "immediate availability and with the characteristics established by regulation (...)."*

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 (RGPD), defines personal data as *"all 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, will be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person" (article 4.1)).*

In turn, it provides that *"the protection granted by this Regulation must apply to natural persons, regardless of their nationality or place of residence, in relation to the treatment of their personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details" (consideration 14 RGPD) .*

Considering that information relating to legal entities is excluded from the scope of protection of the data protection regulations (not so individual entrepreneurs or liberal professionals), there would be no inconvenience, from the point of view of the protection of data, when giving the person claiming the information they request in relation to the legal entities holding a license for the activity of housing intended for tourist use (a list associating with each registration number the name of the legal person). This, without prejudice to the concurrence of other limits that, where appropriate, may limit this access.

Given this, this report will focus exclusively on access to information on license holders of tourist accommodation who are natural persons, including sole proprietors.

III

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."*

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically,

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

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

For its part, article 86 of the RGPD provides that *"the 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 (LTC), aims to regulate and guarantee the transparency of public activity.

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

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

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

The information relating to the holders of tourist housing licenses available to the Department that is the subject of the complaint is public information for the purposes of article 2.b) of the LTC and, therefore, remains subject to the regime of access provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 et seq. LTC).

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

IV

The information requested refers to the identity (name) of the license holders of housing for tourist use, associating it with the housing in question (through the

registration number in the Catalan Tourism Register), which in principle would not be particularly protected personal information in the terms established by article 23 of the LTC.

Therefore, its access by the person making the claim requires a prior reasoned weighting between the public interest in the disclosure of this information and the rights of the possible 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 the information on the houses for tourist use is available in the Tourism Registry of Catalonia, whose application regulations provide for its public nature. However, the identity of the license holders is not part of the information that is public.

Article 131.2 of Decree 75/2020, of August 4, on tourism in Catalonia, which develops Law 13/2002, mentioned above, regulates the data that must be included in the Tourism Register of Catalonia and, by which expressly applies to tourist accommodation, provides for the registration, among others, of the data relating to the holder and the address of the accommodation.

Decree 75/2020 also regulates, in its article 131.4, the publication of the data entered in this Register while establishing that *"the data entered are publicly accessible and online and, without prejudice to compliance with the current protection regulations of data, everyone can consult them and extract the information they need in accordance with the regulations on the reuse of public sector information."*

As this Authority has highlighted on numerous occasions (among others, in opinions CNS 22/2013, CNS 29/2019 and CNS 13/2022 or in the IAI report 52/2018, available on the Authority's [website](#)), the public nature of the records provided for by the applicable regulations must not presuppose access to any type of personal information that they may contain or that this information must be disseminated through any system and with a generalized scope.

In this case, it is Decree 75/2020 itself which, despite providing for active advertising (which, from the data protection aspect, should be provided for in a standard with the rank of law (Article 6.3 RGPD)), refers to compliance with data protection regulations regarding access to personal information.

Therefore, in this case where the identity of the natural persons holding the corresponding license for the exploitation of houses for tourist use is requested,

associated with the registration number in the Tourism Registry of Catalonia, it is necessary to carry out the balancing of conflicting interests.

In this sense, it should be borne in mind that, although the exercise of the right of access *"is not conditional on the concurrence of a personal interest, it 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 for said weighting (article 24.2.b) LTC).

In the letter accompanying the claim, the claimant mentions his status as a journalist and states that *"the information requested, relating to the distribution of the tourist housing sector and its owners, is of maximum social and journalistic interest. Knowledge and disclosure of which companies and individuals own the largest number of tourist homes would be of general interest in a context in which housing and the harmful effects of tourism are, in fact, two of the recurring elements in surveys about public concerns in Catalonia and especially in the city of Barcelona, where most of the HUTs are concentrated ."*

It should be borne in mind that the purpose pursued by the transparency regulations is *"to establish a system of relations between people and the public administration and other obliged subjects, based on 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"* (article 1.2 LTC) or, in other words, establishing the possibility of offering tools to citizens for the control of the performance of public authorities.

In this context, knowing the data available to the public administration on the holders of licenses for the activity of housing for tourist use can certainly provide information that can allow a diagnosis of the situation to know the number of homes in the hands of large holders and the towns where they are located.

In fact, the Tourism Registry of Catalonia responds to this same purpose, as can be seen from article 73.1 of Law 13/2002 and, more specifically, from article 131.1 of Decree 75/2020, which provides the Next:

"1.(...)

*2. The purpose of the Tourism Register of Catalonia is to maintain a **public census of legal tourist accommodation existing in Catalonia** and to collect data from companies and regulated activities, as well as other activities of tourist interest, for its subsequent statistical use.*

*3. The Catalan Tourism Registry has the functions of organizing tourist activity, promoting and improving tourist quality, and **knowledge of reality** ; the informative , statistical and certification functions , and those of support to the **bodies of the administrations and to all those interested in the study and research in tourism matters.**"*

However, it does not seem clear that it is strictly necessary for this purpose to find out how the property of the homes for tourist use is distributed to obtain information about the identity of the specific natural persons holding the license to carry out such activity.

From the point of view of the people affected and with regard to the possible damage that access could entail for their privacy, it must be taken into account that, although the activity of accommodation for tourist use is an activity commercial (it is subject to the Economic Activity Tax in accordance with Royal Legislative Decree 1175/1990, of September 28, which approves the rates and instructions of the IAE) and, therefore, a priori it would be information linked to the exercise of an economic activity, in the specific case the impact on your personal sphere could be greater given the particular circumstances of the accommodation in question, which in many cases can constitute the domicile usual of these people.

Point out that the address of the home that has a tourist use license is part of the public information and can be consulted through the Catalan Tourism Registry, so provide the name of the license holder together with the registration number in the Registry, which is also public, would in these cases involve revealing your address. This is data in respect of which, in general, it is necessary to guarantee its confidentiality, since the personal safety of the people it refers to and/or the safety of their assets could be threatened.

Also, even in relation to those homes that were not a habitual residence, from the moment information on their location is revealed, the safety of license holders or their family members, and that of themselves, could be affected 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).

It should be added that providing this type of information on the number of homes that the person holding the license owns, so that they can be identified, can easily allow you to obtain a patrimonial profile of this person.

Therefore, providing the information requested by the person claiming about the natural person holders of housing licenses for tourist use could lead to a significant impact on their life not only in the commercial or professional aspect, but also in the his private sphere.

Given these circumstances, the weighting should be in favor of protecting the identity of the natural persons affected and delivering the information in an anonymized manner (consideration 26 RGPD and article 70.5 RLTC).

According to the request for access, the claimant would go for this option. Initially, he requests to know *"a list of all the tourist accommodation registered in the register, associating with each registration number the name of the company or natural person that manages each license for each tourist apartment" and, alternatively, only request this same information without identifying the affected persons, "in the case of natural persons, if it is not possible to provide the name, associate each natural person's name with a control number that allows quantifying how many licenses are managed by each specific natural person ."*

According to the information in the file, the claimant would have already obtained certain information in an anonymized manner. Specifically, it appears that the

Department has given him a list indicating the number of natural persons who manage the same number of licenses (and another list for the case of legal entities). Thus, for example, it is indicated that a total of 56,421 natural persons are holders of a single license; a total of 4,743 individuals hold two licenses; a total of 921 individuals hold three licenses, etc. until reaching a single natural person who holds 67 licenses.

The solution adopted by the Department is fully respectful of the right to the protection of personal data and would meet the objective of the claimant's request for access, given that it allows him to quantify how many licenses are managed by natural persons without resulting identified

In the letter that accompanies the claim, however, the claimant claims that the information provided does not correspond to his request and that, in any case, it is insufficient. He considers that it could be more detailed and, in this sense, mentions the possible attribution of a control code to associate each home with its owner or, at the very least, a possible territorial segmentation by municipalities or, in the case of Barcelona, by neighborhoods.

For the purposes of achieving the intended purpose with the access that is understood, it would respond to the desire to know the reality of the current situation in what regards the proliferation of this type of housing for tourist use and not only a mere quantification, it cannot be ruled out that it may be convenient to have information with the greatest degree of detail possible, which could include knowing the population where each home is located in relation to each person holding the license.

From the point of view of data protection, it does not seem that there should be any inconvenience in providing anonymized information about the natural person holders in a more disaggregated manner. This provided that the territorial unit to which it refers is sufficiently broad to guarantee the non-identification of the affected persons.

The person making the claim refers to the possibility of obtaining the information segmented by municipalities and, in the case of Barcelona city, by neighborhoods.

According to the information available, at the date of preparation of this report, the city of Barcelona is territorially divided into 10 municipal districts, which group together a total of 73 neighborhoods, and also has two areas of special interest. It should be borne in mind that, in view of the territorial delimitation of the neighborhoods in question, it cannot be ruled out that providing a list indicating the number of licenses that each natural person holds linked to the neighborhood where the home is located could end up in this case making the affected person identifiable. Faced with this risk, information should be provided by aggregating it at a higher level, such as by district.

Nor can it be ruled out that providing said information segmented by municipality could in some cases, and especially in the case of small municipalities, lead to the identification of the affected people. If so, the information should also be offered by aggregating it at a higher level, such as by counties.

In any case, the identification of the person who is the holder of the license and owner of the home should not be carried out through codes or other information that allows their identification (registration number, ID, etc.).

conclusion

The right to data protection would prevent the claimant's access to the name of the natural persons holding a license for the activity of housing for tourist use associated with the registration number in the Catalan Tourism Register. However, there would be no inconvenience in providing anonymized information with a level of territorial aggregation that guarantees the non-identification of the affected persons .

Barcelona, February 14, 2023

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