

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against the denial by a city council of access to the inventory of licenses for major works transferred to the Archive of District and the Historical Archive of the City Council.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the denial by a City Council of access to the inventory of licenses for major works transferred to the District Archive and the City Council's Historical Archive.

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

Background

1. On November 1, 2022, a citizen makes a request for access to public information to a City Council in which she requests the following information:

" The inventory of licenses for major works from (...) that have been transferred to the District Archive and the City Council's Historical Archive with the following metadata: location -street name and number-, petitioner, type of work, year of the work, architect - if known -."

2. On December 15, 2022, the City Council notifies the person requesting the resolution by which it was agreed not to admit the request for access to information.

3. On January 11, 2023, the applicant filed a complaint with the GAIP in which he alleges: *" The City Council argues that it would be a huge task for them to prepare the requested information. I understand that they must have it because it is the basic job of archivists. In addition, LAW 20/2015, of July 29, amending Law 10/2001, of July 13, on files and documents, Article 9. Amendment of Article 35 of Law 10/2001, point 1 A, obliges to "Make public the instruments of documentary description that allow researchers and citizens to locate the documentation they have", and the inventory is the instrument of description par excellence"*.

4. On January 23, 2023, the GAIP sends the claim to the City Council and asks for a report setting out the factual background and the foundations of its position in relation to the claim, as well as the complete file and, if applicable, specifying the third parties affected by the claimed access.

5. On February 9, 2023, the City Council issues a report in which it justifies the denial of access to the high number of files affected (by way of example it is noted that only in the file (.. .) about 3000 works files have been deposited), and therefore considers that the

preparation task is totally disproportionate and excessive. Likewise, it indicates that among the data requested is the name of the petitioning person, and, as indicated in accordance with the provisions of article 24 LTAIPBG, access to the first and last names of the holders could affect the limit of the protection of personal data. And, if applicable, the transfer of the request to the affected third parties would entail an excessive, disproportionate and complex task, as well as a very high cost for the Administration.

6. On February 13, 2023, the GAIP requests a report from this Authority, in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates 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, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (art. 4.1 of Regulation 2016/679, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and by which Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

Therefore, any other limit or aspect that does not affect the personal data contained in the requested information and, specifically, the allegation made by the City regarding the excessive, disproportionate and complex task that would be required to comply with this request for information.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

II

The data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGD, apply to the treatments that are carried out on any information " *on an identified or identifiable natural person ("the interested party »); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person "*.

The claimant requests " *the inventory of licenses for major works in the District of Gràcia that have been transferred to the District Archive and the Historical Archive of the City Council with the following metadata: location - street name and number -, petitioner, type of work, year of work, architect - if known.*" This information contains personal data relating to the natural persons petitioning for the licenses as well as personal data of the architects of the work.

It is understood, for the purposes of this report, that the petitioner refers to the person holding the license (to differentiate it from the person applying who may be a person other than the holder of the license who may act through representative).

With regard to the legal entities holding the licenses, it should be borne in mind that, in accordance with the provisions of recital 14, the RGD " *does not regulate the processing of data personal relating to persons legal and in particular companies constituted as persons legal entities , including the number and form of the legal entity and above contact details "*. Consequently, there must be no inconvenience from the perspective of data protection regulations in providing the interested party with the required information referring to the legal entities holding the licenses for major works .

For its part, article 4.2) of the RGD considers " *treatment*": *any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction* .

In accordance with the provisions of article 5.1.a), any processing of personal data (understood 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, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction*")

it must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGD establishes the need for one of the legal bases of article 6.1 to be met, among

which the treatment is necessary for the compliance with a legal obligation applicable to the data controller (6.1.c) .

As established in 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 may only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

For its part, article 86 of the RGPD provides that "*the personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority , organism or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation .*

It follows from all this that the applicant's access to the personal data that may contain the requested information on the basis of the fulfillment of a legal obligation by the City Council (responsible for the treatment (art. 6.1.c) RGPD), must necessarily be covered by a rule with the rank of law.

The right of access to information held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, LTC), which recognizes people's right of access to public information, understood as such "*the information prepared by the Administration and that which it has in its power as a result of its activity or of the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law*" (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The information subject to the claim is public information for the purposes of article 2.b) of the LTC, and is subject to the right of access (article 18 of the LTC).

However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data.

III

From the outset it can be ruled out that the requested information contains special categories of data in the terms of article 23 of the LTC, in which case access should be denied unless the express consent of the interested

In relation to the personal data that may appear in the requested documentation that are not considered to be particularly protected, in the case at hand, the personal data identifiers of the applicants and/or holders of the licenses and the personal data of the architects of these licenses, the provisions established in article 24.2 of the LTC apply, which establishes:

"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 is therefore appropriate to make a reasoned weighting between the damages that could be caused in the right to data protection if access to the requested information is given and the benefits that for the public interest can be derived from this access, taking into account, among others, the criteria related in this article 24.2 LTC.

First of all, access to the personal data of applicants and/or holders of building permits is analysed.

The first of the elements referred to in article 24.2 LTC is that relating to the time elapsed since the processing of personal data. In the case we are concerned with, the requested information is, as already explained, the inventory of the licenses for major works in the District of Gràcia that have been transferred to the District Archive and the Historical Archive of the Town hall. In this sense, it must be taken into account that, initially, the longer time elapsed since the processing of the files would be an element favorable to access to the requested information that contains personal data.

In accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses the purpose he is pursuing and, in short, the reasons for which interest in knowing the information, adds a very important element to be taken into account as a weighting criterion between the public interest in the disclosure of the information and the rights of the people affected.

In the case we are dealing with, the person making the claim alleges that article 35 of Law 10/2001, of July 13, on files and documents obliges the archives of the Archives System of Catalonia to *"Make public the instruments of documentary description that allow researchers and citizens to locate the documentation they have"*.

Article 35 of Law 10/2001, to which the claimant refers, states that:

*"1. In order for users to be able to locate and identify the documents and be able to access them, the archives of the Catalan Archives System must comply with the following **transparency obligations** :*

- a) Make public the **documentary description instruments** that allow researchers and citizens to locate the documentation they have.*

(...)

d) Inform users of the right to complain and the procedures they must follow in the event that the right of access is denied.

*2. The information referred to in section 1 must be available for consultation on the **transparency portal and on the electronic headquarters** or website of the body in charge of the archive and document management service."*

Thus, the " *inventories of documentation*", specifically, the inventory of municipal licenses for major works claimed, would be a " *documentary description instrument*", which, according to the regulations (art. 35.1.2 Law 10/2001), The City Council should make it public.

The description is the key element for the identification and localization of the documentation.

The different description instruments prepared by the archivists are the key elements that allow the identification and localization of the documentation. Also through these instruments, users whether researchers and/or citizens can locate and consult the information they need.

The Archive of the US publishes the index of the documentary funds, the inventory of the documents in custody and the list of the instruments of description.

The index of the documentary collections describes the content of each collection held in the Archives of the institution based on the documentary series (code and name of the classification) and its chronological scope. This tool allows you to have a global view of the documents in the Archive, as well as specify the scope of each fund or the documents resulting from its functions.

The list of description instruments informs of the tools developed by the Archive of the entity to locate the different documents and it basically deals with guides, inventories and catalogues, although there may be others such as for example: transfer relations.

However, at the outset, it does not follow from the regulatory provision of the aforementioned article 35.1.2 Law 10/2001 that the documentation inventories cited must necessarily incorporate, and in all cases, the personal data that inventory metadata may include. The inventory must describe the type of documents available, but it does not necessarily have to include all the data contained in these documents.

Therefore, in principle, this obligation to publicize the inventories would not be an element that could be considered in favor of access to the claimed personal data.

However, on the possibility of making public the identification data of applicants and/or holders of licenses, in the inventories of municipal planning licenses, this Authority pronounced in its opinion CNS 46/2018 in which it was concluded that: " *It is not appropriate to publish the metadata consistent with no. of DNI of the people who have applied for planning licenses, on the occasion of the publication of the inventory of documents. However, current legislation enables the publication of urban planning licenses granted, including the name and surname of the people who have requested it, without including other unnecessary identifying data such as the number. of ID.*"

This conclusion is derived , among others, from the following considerations; first of all, it is necessary to take into account Decree 179/1995, of 13 June, which regulates the Regulation of works, activities and services of the local entities of Catalonia (ROAS), already foresees that some publicity is given to the agreements or the resolutions granting licenses.

Specifically, article 84 of the ROAS, provides the following:

*"1 Agreements or **resolutions granting licenses must be published in the manner provided for in the law and in the ordinances of the corporation** . In any case, they must be inserted on the notice board **and published** , when available, in the municipal newsletter.*

2 When it comes to construction works or installations referred to in sections 2 and 3 of article 75 of this Regulation, local ordinances may provide for the duty of the holder of the col· place in a place visible from the public road a standardized announcement that informs about the granting body, the date and the main urban characteristics of the license."

Likewise, it was considered that in urban planning matters all people have the status of interested parties without the need to prove special legitimacy, given the recognition in the sectoral regulations of public action, which justifies the need to have extensive information on this matter. According to article 12.1 of the Revised Text of the Urbanism Law, approved by Legislative Decree 1/2010, of August 3 (TRLU):

"1. Any citizen, in the exercise of public action in matters of urban planning, may demand before the administrative bodies and before the administrative contentious jurisdiction the compliance with the legislation and urban planning, an exercise which must conform to what establish the applicable legislation.

2. The public action referred to in paragraph 1, if it is motivated by the execution of works that are considered illegal, can be exercised while the execution is prolonged and, subsequently, until the expiry of the limitation periods determined by articles 207 and 227, without prejudice to the provisions of article 210."

The public action allows anyone to contest the different instruments of arrangement, as well as the acts of their application, which implies that the citizen must be able to have access and obtain copies of the documents in the file whether these are files in processing as if they were part of closed files, during the period in which public planning action can be taken.

Therefore, it was concluded that these regulatory provisions would justify any citizen being able to know the urban planning licenses granted, including the first and last names of the people who have requested it. On the other hand, it was considered, in accordance with the principle of data minimization in Article 5.1.c) of the RGPD, that on the occasion of the publication of the inventory of documents it would not be appropriate to publish the metadata consisting of the ID number of people who have applied for planning licenses.

In short, the criterion followed by this Authority at the time was based on the consideration that the current legislation would enable the publication of the inventory of works licenses including the metadata relating to the names and surnames of the persons who are the holders, without including other unnecessary identifying data . In accordance with this criterion and, to the extent that in the case at hand the claimant wants to access the inventory of building licenses that the city council is obliged to publish and certain metadata that may be the subject of advertising with the 'mentioned inventory, it does not seem that

there should be any impediment, from the point of view of data protection regulations, in providing this information to the person making the claim.

Regarding access to the data of the architects responsible for building permits, it should be noted that facilitating the identity of the architect means providing identifying information about them, but also information related to their profession (employment data). In this sense, making known the architects who have intervened in the different building licenses can provide certain information in relation to part of their professional activity. However, this information would in principle be partial because it would affect a specific area of its activity, that of major works licences, and would be limited to a specific geographical area, such as the required municipality.

In line with the criterion adopted by this Authority previously, even though the professional performance of the architect occurs within the scope of his private professional sphere, from the moment when this necessarily passes through the control and intervention of the competent administration to grant the urban planning license, that professional action transcends the exclusively private sphere, and from here it cannot be ignored that the fact of being able to know who is the architect responsible for the work project necessary for the processing and authorization of the corresponding licenses by the City Council has public significance.

To these elements it is necessary to add what is more important, which is the fact that it is not clear that the disclosure of these data relating to the professional sphere of the people affected could have consequences that must necessarily be negative. This means that, once the damage test has been carried out, it cannot be concluded that providing this information will necessarily cause damage that justifies, as provided for in the Transparency Law, a possible denial of access.

Therefore, in the event that the name and surname data of the architects responsible for building permits appear in the metadata of the inventory of major building permits claimed by the applicant, the data protection regulations would not prevent access to this information.

conclusion

The data protection regulations do not prevent the person claiming the inventory of major works licenses that have been transferred to the District Archive and the City Council's Historical Archive with the street name and number metadata to be given to the person making the claim, petitioner, type and year of the work and architect, without prejudice to omitting those personal data of the holders of the works licenses that are not necessary to achieve the purpose pursued, such as the DNI data of these people.

Barcelona, March 3, 2023