

## **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 refusal by a City Council to request access to certain property liability files since 2007 until 2022**

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 refusal by a City Council to the request of access to certain patrimonial responsibility files from 2007 to 2022.

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 Adviser, I issue the following report:

### **Background**

1. On November 24, 2022, a person submits an application to a City Council requesting access to the following information:

*"-All asset liability files, from the years 2007 to 2022, whose interested party is Mr. [...].*

*- With respect to the above, the judicial proceedings in which said administrative procedures may have resulted."*

2. On November 29, 2022, the City Council will notify the person requesting the transfer of their request to the person affected by the request so that they can present allegations if they consider it appropriate.

3. On December 12, 2022, the person affected by the request submits a statement of objections in which he is dissatisfied with the fact that the requested information is provided to the person requesting it, since it includes information relating to legal proceedings and the fact that it contains data relating to your health (medical reports and forensic expert opinions). Consider that the intended access may affect your security.

The affected person points out that part of the access request belongs to a judgment of the administrative contentious court number 13 of Barcelona which can be consulted publicly without the need to access the rest of the specially protected data.

4. On December 27, 2022, the City Council decides to reject the right of access request based on articles 23 and 24 of Law 19/2014, of December 29, on transparency, access to public information and good government. In particular, it denies access to the requesting person because among the documentation he requests particularly protected data is affected, also because the person affected by the request has objected to granting access to the person requesting and, finally, because he considers that with respect to the data that are not particularly protected, *"the damage caused to the applicant by not accessing the file is much less than the damage it would cause to the 'affecting the facilitation of your data, since your right to the protection of personal data (including specially protected data), your right to privacy and your right to security would be violated .*

5. On January 19, 2023, the applicant submits a claim to the GAIP in which he reiterates the terms of his application and sets out, among other issues, the following grounds:

*" The rejection made by the City Council is totally unfounded since it is totally based on the opposition of Mr. [...]. Said opposition has not been transferred to me.*

*I want to obtain the information related to the patrimonial responsibility files (administrative and judicial procedure). I am not interested in the data and documents relating to the health of Mr. [...]. You can give access to the requested information by censoring the Ayto said data and documents."*

6. On January 31, 2023, the GAIP sends the claim to the City Council, and requests a report setting out the factual background and the basis for 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.

7. On February 7, 2023, the City Council sends GAIP a report in relation to the claim.

In this report, the City Council confirms the reasons for denying the access request, and reports that since 2021 more than 80 instances have been registered by the person making the claim, and their family members, related to urban irregularities related to the person affected by their request. He considers that the action of the person claiming evidences an abuse in the exercise of the right of access to public information.

8. 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 complaints against resolutions regarding 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 is outside the scope of this report, in particular, according to the allegations made by the parties, the limits provided for in articles 21.1.d) and 21.1.g).

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 RGPD, 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 "*.

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* .

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment " *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 can 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 .*

Public access to documents 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 the "exercise of his 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).

In the case we are dealing with in which access is requested to files relating to patrimonial responsibility procedures processed between the years 2007 and 2022, which affect a certain person, this information must be considered public for the purposes of the article 2.b) of the LTC and subject to the right of access (article 18 of the LTC), being documentation in their possession as a result of their powers.

It must be noted, however, that this right of access is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case with the limits of articles 23 and 24 of the LTC regarding personal data.

### III

As can be seen from the information available, the files to which the claimant intends to access are related to patrimonial responsibility procedures processed by the City Council, between the years 2007 and 2022, in which the interested person is a third party, unrelated to the applicant and whom he identifies in his application. He also requests to know the judicial proceedings in which these proceedings may have resulted.

Before going into the substance of the request, it is necessary to emphasize the fact that it does not appear from the file processed by the GAIP that among the requested documentation data relating to other people other than the that identifies the person making the claim in their request, without prejudice to the staff at the City Council's service who have participated in the processing of the files by reason of their position.

On the other hand, it is not known what is the exact content of the patrimonial responsibility files that are affected by the access request. But, in any case, it should be borne in mind that in accordance with the legislative framework regulating the patrimonial responsibility of public administrations, citizens have the right to be compensated by the public administrations of Catalonia for any injury they suffer in any of them goods and rights, as long as it is a consequence of the normal or abnormal operation of public services, except in cases of force majeure or damages that citizens have a legal duty to bear (article 32 Law 40/2015, of 1 October , of the legal regime of the public sector (LRJSP)).

And, at the very least, among the documentation that must make up the files relating to patrimonial liability procedures, there must be, at least with regard to the procedure for initiating the procedure, the reference to the injury that has allegedly occurred in the interested person or persons, their causal relationship with the operation of the public service, the economic evaluation and the moment when the injury would have actually occurred and, as for the resolution, it must necessarily be pronounced on the existence of the causal relationship between the operation of the public service and the injury caused and, if applicable, on the assessment of the damage caused, the amount and the method of compensation, when applicable (arts. 61.4, 67.2 and 91 of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (LPAC)).

In the particular case, according to what appears in the file sent, among the information affected by the access request there is data relating to the health of the affected person. In relation to this, it must be said that although the City Council refers in its legal report to the fact that, in addition to medical reports, the files to which access is requested also contain other sensitive data, there is no sufficiently clear to which information or categories of personal data it refers. In other words, it is unknown whether, in addition to the health data of the person affected by the access request, other data referred to in article 23 of the LTC are also affected (relative data to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail public reprimand offender).

In any case, in accordance with the provisions of article 23 of the LTC, access to information that refers to specially protected categories of data must be denied, unless the affected person expressly consents to by means of a written document that must accompany the request.

Once these elements have been established, it is considered appropriate to analyze the substance of the matter based on the provision of article 24.2 of the LTC.

Article 24.2 of the LTC provides the following:

*"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."*

This article establishes the need to make a reasoned weighting between the public interest in disclosure and the right to data protection of the people affected. In this weighting it is necessary to take into account all the circumstances that affect each specific case with the aim of determining whether the claimant's right of access or the data protection right of the affected persons should prevail, taking as based on the different elements listed in the aforementioned article.

One of the circumstances that must be taken into account is the purpose of the access (art. 24.2.b) LTC). In this sense, although article 18.2 of the LTC provides that the exercise of the right of access is not conditional on the concurrence of a personal interest, and does not remain subject to motivation or require the invocation of any rule, knowing the motivation for which the person making the claim wants to obtain the information can be a relevant element to take into account.

The person making the claim does not state in any of his writings the reason why he is requesting access to the patrimonial responsibility files he refers to, beyond showing dissatisfaction with the grounds on which the City Council denied access .

To this end, it may be significant that the request is aimed at all property liability files sent between the years 2007 and 2022 in which a certain person is an interested party, and which he identifies in his request , as well as knowing which judicial actions resulted from these files, if applicable, or, on the other hand, the fact that in accordance with what the City Council presents, the person claiming has submitted since the year 2021 more than 80 instances related to urban irregularities and which would be related to the affected person in the property liability files to which he intends to access.

However, it is considered that this information does not make it possible to clarify whether the purpose of the person making the claim is to control the activity of the City Council, for example, because what he intends is to verify that there is no favorable treatment or that they have been arbitrary decisions by the corporation in matters that affect a specific person (the affected person), or the purpose is to control the specific person who is related to the City Council.

For this reason, this element cannot be considered for the purpose of carrying out the weighting referred to in article 24.2 of the LTC.

Therefore, the issue must be analyzed from the point of view of the general purpose of the transparency regulations, that is to say, the purpose of establishing " *a system of relationship between people and the public administration and the 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* " (article 1.2 LTC). Or in other words, to offer tools to citizens to control the actions of public authorities, and not to create means for the control of the citizens themselves.

From this perspective, and in general, the request for access to information relating to patrimonial responsibility procedures can allow any citizen to control the actions of the City Council in the different areas of municipal activity and the management of public resources and, in particular, in the case at hand, it may be relevant to know the existence of one or several claims of patrimonial responsibility before the City Council, especially if these are estimated or partially estimated, given that this it implies, not only the existence of a questionable specific municipal administrative action in the sense that it has caused damage to a citizen, but also the existence of a cost or expense borne by municipal public resources.

In these cases, in accordance with the principle of data minimization (art. 5.1.c) of the RGPD) by which the data must be adequate, relevant and limited to what is necessary in

relation to the purpose for which they are treated, the purpose of controlling the actions of the City Council could be achieved with the previous anonymization of the files.

To this end, it should be borne in mind that article 70.6.a) of the RLTC defines anonymization as *"the elimination of the personal data of the natural persons affected contained in the information and any other information that may allow identify them directly or indirectly without disproportionate efforts, without prejudice to being able to maintain, where appropriate, the merely identifying data of the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act"*.

However, in the case at hand it must be taken into account that the person has an interest in knowing the property liability files processed from 2007 to 2022 by the City Council in which a person he identifies as an interested party, and the information related to the judicial proceedings that may have resulted.

It is clear that this makes anonymization not an effective measure because the person making the claim has already identified the person concerned in the administrative procedure.

Taking into account that anonymization is not effective, it does not seem that granting access to the requested documentation, that is, all the documentation of the patrimonial responsibility files, and the resulting judicial actions, but without anonymization is a possibility, since from the point of view of the person affected by the access request, although there are no elements to determine that the access may compromise their security, it is considered to involve a significant invasion that it can affect different personal spheres. And, in these terms, in weighing up the competing interests, the rights of the person affected by the access request should prevail over the public interest in disclosure.

However, from the point of view of the purpose of transparency, it is considered that it would be possible to be able to inform the person claiming of the number of patrimonial liability files processed by the City Council where the person identified is an interested party, the meaning of the resolution and, where appropriate, the compensation, as well as whether legal actions have been taken. It is considered that this impact would not be greater than that suffered by other citizens in order to guarantee the transparency of other actions of public administrations which, as in the case at hand, also have a direct impact on public resources. Thus, as an example, in matters of subsidies or in the contracting of services provided by certain professionals, it would be justified, in general, to be able to know the amount or amounts received by the people who are beneficiaries.

## **conclusion**

Taking into account the terms in which the claim is made and the elements involved, the data protection regulations prevent the claimant from accessing the full content of the property liability files processed by the City Council between 2007 and 2022 that affect a specific person, and the information related to the judicial actions that may have been derived. However, if information could be provided regarding the number of patrimonial liability files referred to in the query, the meaning of the resolution and, where applicable, the compensation, as well as whether legal actions have been taken.

Barcelona, March 3, 2023

Machine translation