

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 partial estimation by a body of the request for access to the complaints and denunciations related to the use from Catalan.

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 partial assessment by a body of the request for access to complaints and denunciations related to the use of Catalan.

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, the following is reported

Background

1. On November 19, 2022, the claimant requests access to the following documentation from the organization:

"I want the list of all the denunciations and complaints presented to (...) related to the use of Catalan and the non-respect of the linguistic rights of Catalan in commercial or similar establishments and to the public administration in the area that be it The list must be from October 2016 to the present. With the following metadata: date of filing of the complaint, establishment, administration or entity reported, object of the complaint, status of processing, result of the processing and date of completion of the file if applicable. Data must be presented in reusable data. In no case do I want personal data".

2. On December 16, 2022, the body issues a resolution by which it resolves to partially estimate the request and provide information regarding the number of denunciations and complaints submitted to the body for violation of the linguistic rights of consumers since month of October 2016 until the date of the request, the date of filing the complaint or complaint, the object, the status of its processing, the result of the processing, the date of completion (if applicable) in the format requested.

And it denies access to information relating to the identity of the establishment, company or entity reported, replacing this data with the data relating to the sector of activity to which it belongs and the legal form it holds.

3. On January 12, 2023, the applicant submits a claim to the GAIP in which he states that the organization has not provided him with all the information and claims again the information that states *"the name or identification of the reported establishment, company or entity."*

4. On January 20, 2023, the GAIP sends the claim to the organization 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 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.

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 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

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.

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

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

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”*.

The information related to the inspections that the body has carried out in the various establishments in the period indicated (from the month of October 2016 to the month of November 2022,) to which the person refers claimant, it is public information for the purposes of article 2.b) of the LTC and, therefore, remains subject to the right of access (article 18 LTC).

This right, however, is not absolute and can be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the limitations and criteria provided for in the transparency legislation (articles 23 and 24 LTC).

III

According to the body's report dated January 24, 2023, it would have decided to hand over to the claimant the information relating to the number of denunciations and complaints submitted to the body for violation of the linguistic rights of consumers from the month of October 2016 until the date of the request (November 19, 2022), the date of filing the complaint or complaint, the object, the status of its processing , the result of the processing and the end date (if applicable).

On the contrary, as can be seen from the body's resolution of December 15, 2022 and from the report sent to the GAIP, the body would have denied the request for access to the identity of the establishment, company or reported entity, replacing this data with the data relating to the sector of activity to which it belongs and the legal form it holds.

Given the response of the administration complained of, the person making the claim considers the information provided to him insufficient, and reiterates his request to know this information (name of the establishments), without specifying the reasons why he specifically wants to know this information, only with the word "study". This, without prejudice to the information that would have already been provided to him, according to the information available.

Regarding the linguistic rights of consumers, article 128, sections 1 and 2, of Law 22/2010, of the Consumer Code of Catalonia , provides :

"1. Consumers, in their consumer relations, have the right, in accordance with what is established in the Statute of Autonomy and the applicable legislation in linguistic matters, to be served orally and in writing in the official language of their choice.

2. Consumers, without prejudice to full respect for the duty of linguistic availability, have the right to receive in Catalan:

a) Invitations to buy, fixed information, contractual documentation, budgets, deposit slips, invoices and other documents that refer to or derive from them.

b) The information necessary for the proper consumption, use and handling of goods and services, in accordance with Law 22/2010 77 with their characteristics, regardless of the medium, format or support used, and, especially, the mandatory data directly related to safeguarding health and safety.

c) The adhesion contracts, the contracts with standard clauses, the standard contracts, the general conditions and the documentation that refers to them or that derives from the execution of any of these contracts."

With regard to the exercise of commercial activity and the provision of services, article 8.3 of Law 18/2017, of August 1, on commerce, services and fairs, states that: *" The people who access commercial activity and the provision of services, even those who do so as salaried workers, must know the conditions for the exercise of commercial activity and the provision of services in Catalonia and must 'to be able to serve consumers when they express themselves in any of the official languages in Catalonia.'*

Law 7/1998, of July 1, on language policy, is expressed in the same sense, specifically, when referring to attention to the public, article 32, provides that *"The companies and the establishments dedicated to the sale of products or the provision of services that develop their activity in Catalonia must be in a position to be able to attend to consumers when they express themselves in any of the official languages in Catalonia."*

In the event of a violation of the linguistic rights of consumers established in Law 22/201 of the Consumer Code of Catalonia, in Law 18/2017, on commerce, services and fairs, or in Law 7/1998 on politics linguistic, may be considered an administrative infraction.

Taking into account the terms in which the claim is formulated, the requested access would affect information on inspections regarding the violation of linguistic rights carried out in different types of establishments, which may be related to violations of the corresponding regulations, and that they would have been carried out over a period of time from 2016 to 2022.

Article 23 of the LTC establishes that:

*"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sexual life, and **also those relating to the commission of criminal or administrative offenses** that do not entail a public reprimand to the offender, unless the affected party expressly consents by means of a written which must accompany the application."*

In the same sense, article 15.1, second paragraph, of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), establishes that:

*"If the information includes personal data that refers to racial origin, health or sex life, includes genetic or biometric data or contains **data related to the commission of criminal or administrative offenses** that do not lead to a public reprimand to the offender, access it can only be authorized if there is the express consent of the person affected or if the latter is protected by a rule with the status of law."*

These precepts exclude the possibility of accessing information related to the commission of criminal or administrative infractions, unless the sanction or penalty entails a public warning to the offender or the express consent of the affected person is the moment of formulating the request.

On the other hand, the RGPD extends its scope of protection to personal data understood as any information about an identified or identifiable natural person (Article 4.1 of the RGPD).

Recital 14 of the RGPD establishes the following:

"The protection granted by this Regulation must apply to natural persons, regardless of their nationality or place of residence, in relation to the processing 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."

In this sense, the limit of article 23 of the LTC (or article 15 of the LT) does not apply in cases where the owners of the establishments about which information is requested are legal entities, to the extent that these are not holders of the right to the protection of personal data, and, in this regard, there can be no impediment to deliver the requested information to the claimant.

IV

However, the limitation of article 23 LTC would be applicable in the event that the information provided allows natural persons to be identified directly or indirectly affected, including individual entrepreneurs and liberal professionals owners of establishments that have been inspected, where appropriate, following a complaint, and that have been sanctioned.

Thus, in the case of individual entrepreneurs it is considered that although it is true that the information related to violations committed as part of the professional or commercial activity that is carried out must in principle affect the commercial and economic interests of the holder which should remain within its business sphere, disclosing this type of information may have also harmful effects that go beyond the strictly business sphere.

In this sense, reporting on the alleged violations committed by these people or on the sanctions imposed may affect not only their personal patrimonial sphere, in the event that they are sanctioned, but may even affect their prestige or its social image - remember that the offender is the entrepreneur or owner of the business regardless of the commercial name that the establishment may use -, for some facts for which responsibility is attributed to him even before he has been sanctioned administratively or judicially, in the event that the procedure has not ended.

On the other hand, articles 23 of the LTC and 15.1 of the LT do not establish any type of distinction in relation to the limitations of access to information relating to the commission of criminal or administrative offenses by individual entrepreneurs, and this means that the privacy expectations of these people regarding the possibility of third parties accessing this information are exactly the same as those that other people may have.

V

In the case at hand, the names of the owners of the premises inspected and/or sanctioned are not requested (information that would allow the direct identification of those affected), in fact, in his complaint to the GAIP, he makes it clear that he continues to request "*the name or identification of the reported establishment, company or entity*" and adds that "*I do not want personal data under any circumstances*".

However, in accordance with what has been stated, the information as requested may affect the right to the protection of personal data, to the extent that this information allows these people to be identified indirectly. Although the identification of natural persons is done indirectly, as has also been shown, the data protection regulations are fully applied, as well as the access limitations provided for in the transparency regulations.

In this regard, Recital 26 of the RGPD provides:

"To determine whether a natural person is identifiable, all means, such as identification, that can reasonably be used by the data controller or any other person to directly or indirectly identify the natural person must be taken into account. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment like technological advances."

And, article 4.1 of the RGDPD establishes:

"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 several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person"

Thus, the data protection regulations apply not only with respect to the information of directly identified persons, but also with respect to those persons who may be indirectly identifiable, as could be the case in question.

In this case, the detail of the information requested by the person claiming regarding the inspections and violations committed, among others, the information referring to the name of the establishments where these inspections have been carried out, could allow the indirect identification of the persons physical owners of the establishments, without disproportionate efforts.

In addition, it should be noted that the inspection actions where infringements have been detected are carried out in establishments where commercial or other activities are carried out, but could also, in some cases, coincide with private homes (as could be the case, for example, of some of the inspected establishments that are retail businesses, which may be the home of the owner of the establishment or business). Likewise, the claimant requests to know the names of establishments inspected over an extensive period (seven full years), which could mean the indirect identification of a large number of natural persons affected, an element that must also be taken into account from the data protection perspective.

On the other hand, it should be borne in mind that the information on the inspections carried out in which allegedly irregular conduct has been detected may be information that has not yet given rise to a disciplinary procedure. The fact that, at the time the inspection report is drawn up, the commission of any infringement has not yet been declared and that the procedure for sanctioning has not been initiated, does not prevent the full application of the limit provided for in article 23 of the LTC.

Thus, as this Authority has so far held, Article 23 LTC does not refer to the need for a penalty to have already been imposed, or even for the commission of an offense to have been formally and definitively declared, rather it refers to personal data "(...) relating to the commission of criminal or administrative offences".

Taking into account in the case at hand the information that would have already been provided to the person making the claim, it is clear that providing the name of the establishments would allow the physical persons affected to be identified, including individual entrepreneurs and liberal professionals holding the premises filed and/or sanctioned, without disproportionate efforts and, therefore, it is necessary to apply the limit of Article 23 LTC to the case at hand.

On the other hand, as reported by the organization, in the period between October 2016 and November 2022, more than 1,200 complaints would have been submitted to establishments and entities of all types, with which the 'indiscriminate access to all the names of the establishments filed could end up causing the identification of a large number of people. In addition, the current owners of these establishments might not be the people filed years ago.

For all of this it is concluded that although the data protection regulations do not prevent access to the information requested regarding the legal persons inspected or sanctioned, article 23 of the LTC limits access to those data that allows to identify, even if indirectly, the natural persons (including the individual business owners of the filed premises) as may be the name of the inspected premises that are responsible, except in cases where the applicable material law provides for public reprimand of the infringer, or unless these persons expressly consent by means of a written document that must accompany the request, or when a rule with the rank of law has expressly provided for its publication (article 15.1 LT).

conclusion

The data protection regulations do not regulate the processing of personal data relating to legal entities, therefore, it would not be an impediment to be able to deliver to the person claiming the requested information referring to legal entities.

However, the data protection regulations do not allow access to the name of the establishments where the actions have been carried out, by the body claimed in the period indicated or other information that allows identification, even indirectly, of natural persons owners of the same (including individual entrepreneurs) .

Barcelona on March 17, 2023