

**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 of a town hall to the request for access to the name and surname of the person who met with the head of the Territorial Area as stated in the report of a file**

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 refusal of a City Council to request access to the name and surnames of the person who met with the head of the Territorial Area as stated in the report of a file .

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 15, 2022, a citizen submitted a request for access to public information in which he requested access to the following information:

*"Name and surname of the private technician of Mr. (...) with which Mrs. (...) on 10/28/2021 (or on the corresponding date), as stated in point 16 of the document "Expedient processing report" dated 05/16/2022, issued at the headquarters of the expe (...) in what I am interested".*

2. On December 16, 2023, the applicant submits a claim to the GAIP against the denial due to administrative silence of the request for access to information on the name and surname of the person who met with the head of the territory area of a City Council, in which it reiterates the request for this information.

3. On January 3, 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.

4. On February 27, 2023, the City Council sends the GAIP a report on the claim submitted and the completed file that is the subject of the claim. In particular, the city council indicates that *"a complete list of the documentation relating to the file (...) (expired planning legality protection file) and file (...) (currently ongoing) is attached."* The report states, among other things, that:

*“1) OK with the report Area technician \_ of Urbanism issued on February 15 and sent via EACAT in the past day 17 of February this year ; it is confirmed in the third section , paragraph second that it is not considered appropriate to inform the technician 's identity gathered with the Head of Territory Area .*

*The meeting held is not part of the file as such, since there is no minutes or report derived from it .*

*Point 16 of the working document internal sent in the same shipping carried out via EACAT (17/02/23), it has no legal relevance , but informative, an extreme that is also considered in the report technician \_*

*2) Mean that the technician gathered with the Head of Territory Area ( Appendix V: copy of the google calendar of the Cape of Territory Area in which a meeting with Mr. (..) on 28/10/2022), it is not municipal worker , is a private person”.*

5. On March 3, 2023, the GAIP requests the City Council's collaboration to implement the hearing process for the person affected by the access. It is not recorded in the file whether this person has made allegations in this regard.

6. On March 7, 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 included in the requested information is outside the scope of this report.

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”*: *cualquier operation or set of operations performed on data personal or data sets \_ personal , yes either by procedures automated or not, such as collection , registration, organization , structuring , conservation , adaptation or modification , extraction , consultation, use , communication by transmission , diffusion or any another form of enabling access , comparison or interconnection , limitation , suppression 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 data personnel of official documents in possession of some public authority or body public or a private entity to carry out a mission in interest public may be communicated by said authority , organism or entity in accordance with the Law of the Union or of the States members that apply them in order to reconcile public access to official documents with the right to data protection personal 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 person”* (section 1).

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

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

The requested information (the details of the person who met with the Head of the City Council's territory area, in the framework of a file for the protection of urban legality,) is public information for the purposes of article 2.b) of the LTC that contains personal data.

Specifically, from the information provided by the City Council, it appears that the meeting with the Head of the City Council's territorial area would have taken place in the framework of a file for the protection of urban legality that had expired at the time of submitting the application in which the person making the claim would have the status of an interested person. This question is relevant from the point of view of the applicable regulations since the additional provision first paragraph 1 of LTC establishes that: " *The access of the interested parties to the documents of the administrative procedures in procedure is governed by what is determined by the legislation on legal regime and administrative procedure*".

In the case at hand, to the extent that the access to public information claimed is part of a completed administrative procedure, it remains subject to the access regime provided for in the LTC.

The LTC would also apply if it is considered (as the City Council alleges in its report) that the information claimed is not part of the above-mentioned file for the protection of urban legality.

The LTC 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 (articles 20 to 25 LTC). In general, the legal limitations to the right of access to public information must be applied in accordance with their purpose, taking into account the circumstances of each specific case, and must always be interpreted restrictively to the benefit of this right and cannot be extended by analogy.

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.

### III

In accordance with article 24.2 of the LTC when the request for access is related to public information that contains personal data not included in article 23 LTC, access to the information can be granted after having carried out a reasoned weighting of the public interest in the disclosure of information and the right to data protection of interested persons taking into account, among others, the circumstances listed in the same article 24.2. These circumstances are:

"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."*

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, it is not subject to motivation and does not require the invocation of any rule, for the purposes of power make a careful weighting between the different rights and interests at stake, knowing the specific purpose for which you want to access the information is a relevant element. In fact, the particular interest that can be pursued by the applicant is provided as a weighting criterion in article 15.3.b) LT by expressly establishing that it is necessary to take into consideration " *The justification by the applicants of their request in the exercise of a right (...)*" .

In the case at hand, the person making the claim, as stated in his claim and as the City Council also acknowledges in its report, would have the status of a person interested in the file in the context of which the meeting took place object of the claim. This fact, although it does not confer a right to access the claimed personal information, could be taken into consideration in the weighing between the public interest in access to information and the right to the protection of the personal data of the 'affected, as long as the reasons for which the knowledge of this information could be useful for the defense of his interests in relation to said administrative file are proven, a matter that is not proven even in the request for access to the information or in the subsequent claim.

In any case, due to the control of the administration's action in relation to the urban legality protection file, it would be in accordance with the data protection regulations and the LTC that the claimant could access the identifying data (name , surnames and position) of the employees or public officials responsible for the actions carried out in the procedure (article 24.1 LTC), as well as the actions carried out by the administration in relation to that file that would allow it to know the data of the reported person.

In fact, the city council has recognized that the person making the claim has the status of an interested person and would have given him access to the documents that make up the file, but it has not given him access to the specific information claimed, considering that it is not it is part of the administrative file itself.

In this regard, it must be taken into consideration that as established in article 33 of the RLTC, public agendas must be made public, in relation to high-ranking public administration officials, regarding the contacts and meetings that they have had with the interest groups, in the terms and with the requirements that are defined in the current regulations governing interest groups. This publicity must contain, in any case, the date of the meeting, the name of the interest group, and the person or persons acting on its behalf and the object of the meeting, with sufficient precision to know what is the main reason for the meeting.

In the case of local bodies, article 7 of the RLTC determines that for the purposes of the transparency regulations, senior officials and local management personnel are considered: "elected officials and holders of *bodies that exercise management or execution of a superior nature, adjusting its performance to the guidelines set by the governing body of the corporation, in accordance with the provisions of the local regulations*". However, it is also expected that " *It is up to each local administration to determine, in accordance with its*

*organizational rules, the senior positions and its own management staff".* It is assumed that the Head of the Area of Territory of the City Council claimed would have the status of a high local official.

With regard to the regulations governing interest groups, it should be remembered that Decree-Law 1/2017, of 14 February, which creates and regulates the Registry of Interest Groups of Catalonia, repeals article 45 LTC (second additional provision), and provides that this register *"acts as a register of interest groups of the Government of the Generalitat, local bodies and public bodies referred to in article 3.1.bic of the Law 19/2014, of December 29, on transparency, access to public information and good governance"* (Section 1), and is organized and managed by the Administration of the Generalitat (Section 3). Therefore, the regime established in the LTC with respect to interest groups is applicable to the required municipality regardless of whether or not it has created its own register of interest groups.

The Register must include, among other information, *" a list, ordered by category, of people and organizations that act with the purpose of influencing the development and application of public policies, and the headquarters of their organization."* (article 49.1. a) LTC), and must publicize the actions of the interest groups, **especially the meetings and hearings held with authorities, public officials, elected members or deputies**, and the communications, reports and other contributions in relation to the matters dealt with (article 49. 2 LTC).

The same transparency law expressly provides that the information regarding those people considered as interest groups is accessible to citizens through the Register created for the purpose, and where all the natural or legal persons, or other groups that the Law considers as such, as well as all activities of direct or indirect influence carried out by these interest groups (Article 50 a) LTC).

From all this, it follows that in relation to events or meetings held with people who can be considered interest groups in the terms provided for in article 47 LTC, to the extent that their publicity through the Registry is already planned of interest groups, there must be no inconvenience in providing any citizen, through the exercise of the right of access, information on the natural persons who would have acted as such, including in the case of the legal entities, the identity of the person or persons who represents them in the meetings held with senior municipal officials.

*"relating to the provision of legal or professional advice directly linked to defending the interests affected by procedures are expressly excluded from the Register of Interest Groups administrative, those intended to inform a client about a general legal situation, conciliation or mediation activities carried out within the framework of the law, or advisory activities carried out for informational purposes for the exercise of rights or initiatives established by the legal system"* and, in general, the meetings held with citizens to deal with matters related to administrative files of a different nature that the City Council may be processing.

In the case at hand, it seems that it can be ruled out that the person with whom the Head of the City Council's Territory Area met did so in his capacity as an interest group or on behalf of a group of interest, in which case, as has been explained, there would be no inconvenience, from the point of view of the transparency regulations, in which the information relating to their first and last names would be facilitated.

It is not stated in the documentation sent, apart from indicating that *"the particular technician held a meeting with the Head of the Territory Area"*, for what purpose he participated in the meeting, nor what type of technician is about.

It could be the case, for example, that this person was a registered technician who had signed a project for the legalization of works related to the file for the protection of urban legality that is the subject of the claim.

With respect to the data of the technical authors of the projects necessary for the processing of planning licenses, this Authority has previously pronounced, for example, in the reports IAI 24/2021, IAI 30/2016 and IAI 5/2017, in which it is clear that, although the technician's professional performance occurs within the scope of his private professional sphere, from the moment when this necessarily passes through the control and intervention of the administration competent to grant the planning license, that professional action transcends the exclusively private sphere, and from here it cannot be overlooked that the fact of being able to know who is the technician responsible for the work project has public significance.

In these cases it was considered that although it cannot be ruled out that the disclosure of the identifying data of the responsible technician may have consequences for him (for example, to the extent that knowing that he is the person responsible for the project may condition future hirings) nor can it be concluded that these must necessarily be negative. On the other hand, it cannot be considered that their identifying data should require specific protection or confidentiality, especially if it is taken into account that it is information that the corresponding professional associations must already make public. For these reasons, it was considered that the weighting of rights would be favorable to access.

In this case, there is no record of the reason why the technician met with the municipal manager, although it is indicated that this would be the technician of the person reported. In fact, the person making the claim notes that *"The number and last names of said person are requested. " técnico and it is data that corresponds to a professional and, therefore, they must facilitate them "*. Certainly, if it is a registered technician who has participated in the meeting in the exercise of his professional functions of advising the person reported in the file for the protection of urban planning legality, and the case is the person in charge of the legalization project of an urban planning action or has signed a report that is part of it, the weighting, following the criteria set out in relation to the registered technicians who sign the projects corresponding to planning licenses, should also be favorable to access.

Apart from this assumption, it does not seem that the right of access to information about the privacy of the person who may have accompanied the reported person in a meeting with the municipal manager should prevail, since it does not seem that knowing his identity may have a significance in the control of the administration's actions, nor has it been justified that it may be necessary information for the exercise of the rights of the person claiming as interested in the file in the framework of which produced the meeting.

Therefore, apart from the assumption that the technician with whom the municipal manager met did so in his capacity as an interest group or a registered professional for having signed a project or some report that is relevant in relation to the file for the protection of urban legality in the framework of which the request is made, access to the requested information should be denied.

**conclusion**

The data protection regulations do not prevent access to the requested information consisting of the name and surname of the person who met with the head of the City Council's Territory Area in the context of a file of protection of urban planning legality, as long as this person has participated as a registered technician in the aforementioned file. Outside of this case, access to the requested information should be denied.

Barcelona, April 13, 2023

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