

## File identification

Archive resolution of the previous information no. IP 480/2022, referring to the Commission for Guaranteeing the Right of Access to Public Information

## Background

1. On 12/21/2022, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the Commission for Guaranteeing the Right of Access to Public Information (hereinafter, GAIP), due to an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant explained that he initiated the procedure for Claim no. (...) /2022, before the GAIP, against the Department of Education, given that it would not have provided him with all the information he requested. And, in this regard, he explained that, as part of the claim procedure, the GAIP opened a hearing process so that the third parties affected by the access to the information that was claimed could present allegations. In relation to this procedure, he complained that the GAIP revealed his identity to the third parties affected by the access, despite the fact that they would not have requested this information. Regarding these facts, it maintains that the aforementioned communication contravened the data protection regulations, and article 62.4 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC ).

Finally, it also highlighted that the Resolution (...), approved by the GAIP Plenary, which finalized the aforementioned claim, contradicted the IAI-(...)/2022 report of this Authority, issued as part of that procedure.

The reporting person provided various documentation relating to the events reported. Among other things, the copy of the Resolution (...), and the copy of the Resolution of the request for access (...) of the GAIP Plenum, which partially approved the person's access here reporting to the Claim file (...) /2022. Specifically, access to the file was approved, and access to the identity, signature, identity document numbers and location data of the parents of a specific educational college was denied, which they signed a document regarding their daughter's harassment case.

2. The Authority opened a preliminary information phase (no. IP 480/2022), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 12/29/2022 the complainant submitted a letter to the Authority, which aimed to expand the present complaint. In this regard, he stated that, the GAIP through the resolution of his request for access to public information no. (...) would have committed the alleged irregularities that are specified below:

- *“He did not inform me at any time of the allegations of the third parties.*
- *During the hearing process, the GAIP lied to me, implied that all third parties had asked to know my identity.*

- *The GAIP did not motivate the provision of my data as required by law.*
- *My personal data was provided irregularly and for free to people who didn't even ask for it.*
- *Once I asked about these issues, the GAIP replied that the file (SAIP-(...)) was already closed and that if I wanted any kind of information I would have to start a new SAIP"*

In this regard, the complainant explained that he had filed an appeal against the resolution of the GAIP that terminated his request for access to public information no. (...). Likewise, he also stated that he submitted the request for access to public information no. (...), which had as its object the file of the request for access to public information no. (...). And, on this, it was clear that the reported entity would have resolved its request for access to public information no. (...), on December 23, rejecting their right to access the data that identifies or allows the identification of the parents of the students of the school who signed a letter about the circumstances of the harassment that his daughter would have suffered. Attached to his letter, he provided a copy of the Resolution on the request for access (...), approved by the Plenum of the entity reported.

Finally, regarding the hearing procedure, the complainant considered it very significant that the reported entity did not consult this Authority, on whether the fact of providing their identity to third parties could affect their right to data protection. And, in this regard, he highlighted that, after asking the GAIP to whom he provided his personal data, he was only told that his personal data was provided "to the parents who signed the letter *in what they said in relation to the circumstances of the harassment situation (...)*", without identifying these people.

4. On 12/31/2022, the complainant submitted a new letter to the Authority, which aims to expand the subject of his complaint, providing more documentation so that this Authority can assess with more knowledge of the cause the alleged irregular action of the reported entity. Apart from several emails exchanged with the GAIP, about different processes processed by the entity reported here, the letter presented shows that, with reference to the reports issued by this Authority - IAI (...)/22 and IAI (...)/22- " *GAIP also does not share the position of APDCAT*" .

5. On 01/23/2023, the complainant submitted a new written extension of his complaint to the Authority, through which he " *provides more information and documentation in order to help in the investigation phase*" . In this regard, it makes a chronological list of its communications with the reported entity and requests the Authority's protection so that it requires the following from the GAIP:

- *That, " Motive as set forth in the regulations (Article 62.4 of Decree 8/2021, of February 9, on transparency and the right of access to public information DTAIP) why it exceptionally deems it appropriate to provide my identity to the affected third parties even though they have not asked for it, as they themselves have stated in writing"*
- *That, " Justify the reason why you told me that these third parties had asked to know my identity and that I provide documentary proof of these requests"*
- *That, "the GAIP is required to clarify whether it obtained my authorization to provide my personal data based on false information, thus violating my right to data protection"*.

Finally, the complainant asks the Authority to consider whether the allegations presented by the affected third parties "are sufficient to deny me access to their identity as they recognized in their IAI report -(...)/22"; to assess the decision of the denounced entity to " *not provide*

*the identity even of the people who, although they were given hearing procedures, decided not to present allegations or presented them outside the deadline"; and that it informs him of the identity of the persons to whom the reported entity provided their personal data.*

The reporting person accompanied his letter with various documentation related to the events reported.

6. In this information phase, on 03/02/2023 the GAIP was required to indicate the circumstances in which third parties affected by the access subject to claim number (...)/2022, would have requested to know the identity of the party who submitted application no. (...), and for him to provide a copy of all the documentation through which the controversial hearing procedure was carried out.

7. On 02/15/2023, the reported entity responded to the request indicated in the previous antecedent. As a preliminary matter, the GAIP specified that the transfer to third parties was carried out in the framework of the processing of the request for access to public information number (...), which the complainant here presented on 04/09/2022, and which had the purpose of accessing the file of the Claim (...)/2022. And, in this respect, he provided the supporting documentation of the procedures carried out to carry out the transfer, among which the following stands out:

- Office notified on 19/09/2022 to one of the people affected by the requested access through which he was informed of the submission of the request for access to public information no. (...), which aimed to access the administrative file of Claim (...)/2022. In this same letter, he was informed that, given that there would be a document in the file in which his identity was stated, he was considered a third party affected, which is why he was given 10 days to present allegations. Likewise, this person was also urged to transfer the mentioned office to other people affected by the access, for the purposes that they could formulate the allegations they deemed appropriate. This procedure was carried out without revealing the identity of the complainant.

- Office addressed to the person requesting [here complainant] on 23/09/2022 informing him that from the GAIP it was considered appropriate to facilitate his identity to the persons affected by the requested access, and granted him a period of five days to present the allegations or documents he deemed appropriate, in order to justify any opposition to the said identity disclosure.

- Email that on 09/23/2022 the person requesting addressed to the GAIP informing of the following: "*I appreciate the opportunity given to me to present allegations to the fact that my identity is provided to third parties affected But as it could not be otherwise, I will not present any allegation or objection. I fully agree with the Commission on the advisability of providing my identity to the affected third parties. What's more, I consider it more convenient that it is their legitimate right to know who is behind the documents that challenge them. What surprises me is that on 14-09-2022 you communicated "I inform you that we are proceeding to start the transfer procedure so that third parties can formulate, within 10 days, allegations, if they consider it appropriate ". And now 9 days later you ask me if I have any objection to being identified in this communication to the affected people. Has the affected people not yet been transferred? (...)"*

- Emails dated 27/09/2022, 28/09/2022, 01/10/2022 and 06/10/2022 through which third

parties affected by the requested access object to the dissemination of their personal data.

- Email dated 10/04/2022 addressed from the GAIP to the third parties affected by the requested access through which the following is reported: "(...) *in response to the request to know the identity of the person who submitted the request for access to public information and once the transfer procedure has been completed, we inform you that it was submitted by Mr. [here complainant]. For this reason, we inform you that you have a new period of 5 days, starting today, to present new allegations if you consider it appropriate.*"

- Emails dated 10/07/2022 through which, among others, certain people affected by access specify that they did not ask to know the identity of the person who submitted the request.

Finally, the letter sent by the GAIP to this Authority also indicated that the person who asked to know who had submitted the reference request did so by telephone between September 19 and 23, 2022. In this regard, they indicate that " *during the call, he requested the technical manager of the file to know the identity of the person making the claim*".

8. On 02/20/2023, the complainant presented new documentation to expand the subject of this complaint. In this regard, he provided a copy of the Resolution (...), of February 9 of the GAIP, which ended the Claim (...), for the purposes of evidencing a " *new contradiction of the GAIP to the reports of the APDCAT* ".

9. On 02/26/2023, the complainant expands his written complaint, and provides new documentation. In this regard, he pointed out that, the denounced entity would have resolved the appeal for reinstatement that he filed against the Resolution of the request for access to public information number (...), and he pointed out that "from its content it is *clear the bad faith with which the GAIP has treated my data, that is why I am informing them so that they can analyze it and take it into account in their investigation of IP 480/202*". Among other documentation, he provided the Resolution of the appeal for replacement, in relation to the resolution of the request for access to public information number (...), of February 16.

## **Fundamentals of law**

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

2. Based on the background story, it is necessary to analyze the reported events that are the subject of this archive resolution.

### **2.1 About the hearing procedure for third parties**

The complainant explained that he presented Complaint number (...)/2022 against the Department of Education, before the GAIP, for the neglect of his right of access to public information, and complained that, in the framework of the processing of this procedure, the reported entity would have transferred its claim, without anonymizing its identity, to the third parties affected by the claimed access. In this regard, he pointed out that these people would not have asked to know who presented the aforementioned claim and that the

communication of their identity contravened the data protection regulations and article 62.4 RLTC.

In turn, the GAIP, consulted by this Authority, has stated that, on 09/04/2022, the person reporting here presented the request for access to public information number (...), which he had for subject to access to the Claim file (...)/2022. And, in this regard, he argued that, given that the object of this request could affect the rights and interests of third parties, he carried out the transfer procedure provided for in article 31 of Law 19/2014, of 29 December, on transparency, access to public information and good governance (hereafter, LTC) which is transcribed below.

*"1. If the request for public information may affect the rights or interests of third parties, in accordance with the provisions of this law, in the event that the potential affected are identified or are easily identifiable, they must be transferred from the request, and they have a period of ten days to present allegations if these may be decisive for the meaning of the resolution.*

*2. The claims procedure referred to in section 1 suspends the deadline for resolution. 3. The transfer of the request must indicate the reasons for the request, if they have been expressed, but it is not mandatory to reveal the identity of the applicant.*

*4. The applicant must be informed of the transfer of the application to third parties and of the suspension of the deadline for issuing a resolution until the allegations have been received or the deadline for presenting them".*

The reported entity argued that, on September 19 and 23, 2022, through a telephone call, one of the people affected by the access, asked to know the identity of the person requesting the information, for which reason, on 09/23/2022 the GAIP notified the person denouncing an office, granting the denouncing party a period of five days to present the allegations it deems appropriate. In response to this office, on 09/23/2022 the person making the complaint sent the GAIP the email transcribed in the 7th antecedent, which includes his consent to the disclosure of his identity to third parties affected by the requested access.

From the documentation provided in the preliminary information phase initiated by this Authority, it is clear that the hearing procedure, in the framework of which the identity of the person making the complaint was revealed, was carried out in the procedure for processing the request for access to public information number (...), and not in the framework of the Claim (...)/2022 as stated by the complainant. In this regard, it should be noted that the processing of both procedures coincided temporarily and that, the submission of application no. (...) entailed the suspension of the processing of the reference Claim.

Having established the above, the GAIP has documented that, on 09/23/2022, the complainant submitted a letter in which he consented to the communication of his identity, to the third parties affected by the access, and that, the transfer that the reported entity carried out on 09/19/2022 and therefore, before obtaining consent, was carried out without identifying the complainant here. As things stand, it has also been proven that the disclosure of the identity of the person who requested access to the controversial information was carried out on 04/10/2022, days after he had consented to the communication of his identity, as stated in the 7th antecedent.

Nevertheless, the complainant has stated that he consented to the controversial communication based on information that he calls "false" and that, according to him, the

GAIP would have provided him. In this regard, he points out that the third parties affected by the access had not requested to know their identity, contrary to what the reported entity communicated, and that, therefore, this personal data was provided to them, without it being necessary.

Consulted by this Authority, the reported entity has reported that on September 19 and 23, 2022, a person contacted the GAIP in order to request the identity of the person requesting the controversial information, given that he was not identified in the application transfer office notified on 09/19/2022.

Well, the hearing procedure of article 31 LTC, as well as the communication of the identity of the person requesting public information, is developed in article 62 of the RLTC in the following terms (the underlined is ours):

1. *The information unit must transfer the access request to third parties who may be affected by the access to the public information requested.*
2. *For the purposes of article 31.1 of Law 19/2014, of December 29, it is understood that the request is transferred by notifying the affected third parties of a communication that must indicate the object and reasons for the access request, if they have been recorded, and must grant a period of ten working days so that third parties can have a view of the file relating to the request for access and formulate in writing the allegations they consider. This procedure suspends the deadline to resolve.*
3. *It is understood that the third parties eventually affected are identified or easily identifiable when the information unit knows their identity and has or can have a channel or way of contact, including an email address.*
4. *The communication must not include the identity of the person requesting, unless, exceptionally, the public administration considers in a motivated way, and after consultation with the person requesting, that the sending of the request with the their identity may be essential for the defense of rights and interests owned by affected third parties.*  
*For the purposes of carrying out the prior consultation with the applicant, the information unit must inform him, by means of communication, of the intention to transfer the application to affected third parties, and grant him a term of no less than five working days so that he can justifiably object to the disclosure of his identity to the third parties affected.*  
*In the event that the applicant in the prior consultation objects to the disclosure of his identity, and the public administration does not consider it sufficiently justified for the purpose of defending the rights and interests owned by affected third parties, the The public administration must decide after considering the impact of third parties and the opposition of the applicant.*
5. *In cases in which the individual notification to a large number of third parties becomes disproportionate in relation to the material and human resources available in each case, the individual notification may be replaced by notification to the representatives of the collectives , sectors or areas affected, if applicable.*
6. *The information unit must inform the person or persons requesting, by means of communication, both of the transfer of the request to affected third parties and of the suspension of the deadline to resolve until they have received the legations or the period of ten working days granted for this purpose has passed.*
7. *For the purposes of article 31.1 of Law 19/2014, of December 29, the body competent to resolve must only take into account the allegations made that can assert data or*

*decisive elements to consider the rights and interests of third parties possibly affected by the access request.*

This regulation does not condition the communication of the identity of the requesting person on the fact that all parties affected by access to the information request to know their identity, but rather that it is sufficient that the public administration considers it necessary, prior consultation with the applicant.

So things, the precepts transcribed from the LTC and the RLTC, constitute the legal authorization according to which the reported entity can reveal the identity of the person requesting the information, to third parties affected by access, giving it a period of five days beforehand, so that it can justifiably object to the disclosure of its identity. Opposition that the Administration must consider, in relation to the rights of affected third parties.

In turn, article 6 of Regulation (EU) 2016/(...) of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of these (hereafter, RGPD) states that a treatment is lawful if any of the legal bases it provides for. In this regard, special mention should be made of article 6.1 sections a) and) RGPD which provide, respectively, that a processing of personal data is lawful when the affected person has given his consent, and when it is necessary for the fulfillment of a legal obligation applicable to the data controller.

In the present case, the reporting person pointed out that he gave his consent based on information that the reported entity would have provided him and which, according to him, is false. However, this Authority does not have any element or indication that allows us to rule out that, indeed, one of the people affected by the access requested, by means of a telephone call, to know the identity of the person who had initiated the request (...). And, on this, even if the concurrence of the legal basis provided for in article 6.1 a) RGPD were ruled out, the truth is that the GAIP could make the controversial communication, protected by articles 31.1 LTC and 62 RLTC, in connection with article 6.1 c) RGPD.

Finally, it should be noted that the complainant also complained that the GAIP would not have motivated the need to communicate his personal data. However, the truth is that the LTC and the RLTC only require that the administration considers in a motivated way that the communication of the data relating to the identity of the applicant may be essential for the defense of the rights and interests ownership of affected third parties. That being the case, from the perspective of data protection regulations, this Authority cannot require the reported entity to provide explanations to the reporting person about the reasons why they considered that providing their identity could become essential, whenever, as discussed, neither the LTC nor the RLTC require this procedure.

For all the above, it is not appreciated that the action of the GAIP was contrary to the data protection regulations.

## 2.2 On the reports issued by this Authority

The reporting person points out that the reported entity would have approved the Resolution (...), which ends the Claim (...)/2022 and the Resolution (...), of February 9, which ends the Claim (...) which, and argues that the criterion of the reported entity, contradicts what is provided in the IAI Reports (...)/22 and (...)/22 of this Authority.

By way of example, the reporting party states that in the report IAI (...) /2022 of this Authority, issued as part of the Claim (...) /2022, it is concluded that the person claimant has the right to access " *the identity of the parents of the students who have provided information about themselves and their daughter (doc. 3 and 6 annex 1), unless the hearing procedure results in some element that prevents this* " and that, on the other hand, Resolution (...) /2022, which finalizes said claim, resolves to reject the complainant's access to the information relating to the identity of the parents of the School who signed a specific document, relating to a case of harassment of the reporting person's daughter, and the handwritten signatures, identity document numbers and location data of any person found among the information claimed.

In this respect, the LTC provides in its article 42.8 that, the entity reported here, must request a report from this Authority, as part of the complaint procedures it processes, when the denial of information is based on data protection personal. Therefore, in accordance with the aforementioned precept, the report of this Authority is mandatory when the administrations substantiate the reason for rejecting access, in whole or in part, based on data protection regulations. However, neither the LTC nor Decree 8/2021, of February 9, contain any provision that contemplates the binding nature of the reports of this Authority by the GAIP.

Lastly, and in relation to the previous one, it should be borne in mind that article 80.1 of the LPAC provides that, unless expressly provided otherwise, the reports are optional and non-binding.

### 2.3 On the other claims of the complainant

Finally, the complaining party asked the Authority to require the GAIP to justify and provide documentary evidence of the requests submitted by the third parties who asked to know their identity, and to demand explanations on whether they had obtained your consent, based on false information.

Well, the reported entity has argued sufficiently that a third person asked to know the identity of the person requesting by telephone, a fact that is also recorded in the nineteenth precedent of the Resolution (...), approved by the GAIP Plenary. In these terms, as has been said, this Authority does not have any rational evidence to cast doubt on this statement of the reported entity. And, in this regard, it must be stated that, it is part of the legal requirements of the operation of any administration and public body, to resolve based on certain and truthful statements.

Otherwise, the complainant also asked the Authority to consider whether the allegations presented by the affected persons " *are sufficient to deny me access to their identity as they recognized in their IAI report-(...) /22*", to assess the decision of the denounced entity to " *not provide the identity even of the people who, although they were given hearing procedures, decided not to present allegations or they presented them outside the deadline* " and to inform him of the identity of the persons to whom the reported entity provided their personal data. Well, with respect to these claims, it should be noted that this Authority does not have the powers to review the processing and resolution of procedures in matters of access to public information, nor can it pronounce on the weightings carried out by the denounced body, under the LTC and RLTC. That being the case, in any case, it should be noted that, from the perspective of data protection regulations, everything seems to indicate that the reported entity has already satisfied the right of the complainant here, to know the categories of recipients in who communicated his identity, when he was informed that his data had been



made available to the parents of a certain educational college, who signed a document relating to the case of harassment of his daughter

**3.** In accordance with everything that has been set out in the 2nd legal basis, it is necessary to agree on the archive of the present actions, in accordance with article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure of 'application to the areas of competence of the Generalitat, which provides that no charges will be drawn up and the dismissal of the file and the archive of the actions will be ordered, when the diligence and tests carried out do not prove the responsibility of the alleged offender

Therefore, I resolve:

- 1.** Archive the actions of prior information number IP 480/2022, relating to the Commission for Guaranteeing the Right of Access to Public Information.
- 2.** Notify this resolution to the Commission for Guaranteeing the Right of Access to Public Information and to the complainant.
- 3.** Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998 , of July 13, governing the contentious administrative jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,