

Carrer Rosselló, 214, Esc. A, 1r 1a  
08008 Barcelona

RESOLUTION OF INADMISSION AND TRANSFER to the Commission for the Guarantee of the Right of Access to Public Information of the rights protection procedure no. PT 18/2018, urged by Mr. (...) against the Illustrious Bar Association of Tarragona

#### Background

1.- On 06/04/2018, the Catalan Data Protection Authority received a letter from Mr. (...) that he had presented to that Agency on 03/21/2018, for which he formulated a claim for the alleged neglect of the right of access to a report drawn up by the Illustrious Bar Association of Tarragona (henceforth, ICAT).

The claimant provided various documentation relating to the exercise of this right, including the access request dated 09/21/2016 submitted on the same date to the ICAT, through which he requested: "a copy of the report drawn up by the Commission designated by the Government Board for the treatment of the VAHUSARI Case because it is necessary and of interest to this lawyer in legal cases against the Government Board period 2008-2012".

The person now claiming also provided a copy of the response letter from ICAT, dated 09/16/2016 (with exit registration of 10/19/2016), accompanied by the agreement of the Governing Board of the ICAT, dated 30/09/2016, which contains the following content: "Not acceding to the request of the lawyer Mr. (...), to be given a copy of the Vahusari report prepared by the commission appointed by the Board of Governors, since for data protection reasons, no type of document can be made available to a third party or documents in which there are identifying data, such as those appearing in the aforementioned report".

Among the documentation provided with the claim was also what - according to the claimant now - would be a letter of demand for a contentious administrative appeal that he would be considering presenting it to the corresponding administrative contentious court, and which would also be based on the denial of access to the aforementioned report, along with a press release published in the Diari de Tarragona ([www.diaridetarragona.cat](http://www.diaridetarragona.cat)), from which documentation it appears that in the Extraordinary General Assembly of the ICAT held on 19/09/2016 the content of the said report drawn up by the commission appointed by the Board of Governors, whose purpose was to clarify whether the payments made by ICAT to the Vahusari Advocats firm since 2005 corresponded to advisory services effectively provided by this firm to the College, since there was no documentary evidence of the services provided, nor of the competition of awarding the service.

In the press release provided by the claimant, it is also stated that two of the partners of the aforementioned firm were deans of the ICAT. And in the aforementioned letter of demand for contentious appeal, the now claimant also points out that in the public reading of the report that was made before the members attending the aforementioned General Assembly, the name and surnames were not mentioned of no partner

## Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to issue this resolution, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2.- The claim received in this Authority is formulated under the protection of art. 16 of Law 32/2010, in which this Authority is given the competence to resolve claims regarding the neglect of the rights of access, rectification, cancellation and opposition, as provided for in the data protection regulations of a personal nature. In the case of the right of access, at the time of submitting the request and subsequent claim, it was regulated in article 15 of Organic Law 15/1999, of December 13, on data protection personal nature (hereinafter LOPD), in the following terms: "1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.

2. The information can be obtained by simply consulting the data by means of the display, or the indication of the data that is the subject of treatment by means of writing, copying, faxing or photocopying, certified or not, in a legible and intelligible form, without using keys or codes that require the use of specific mechanical devices.

3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."

Thus, in article 15 of the LOPD - and also in article 27.1 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the LOPD (hereafter RLOPD) -, configures the right of access as the right of the affected person to obtain information about their own personal data that is being processed and, where applicable, about the purpose of the treatment, as well as the available information about the origin of the aforementioned data and the communications made or planned. In similar terms, the right of access is also regulated in art. 15 of the European Data Protection Regulation (RGDP), applicable from 25/5/2018.

Well, we can move forward since the object of this claim is not the right of access regulated to the precepts of the data protection legislation that have been mentioned, given that the documentation to which the affected person intends to access it does not contain information relating to your person, but above all it contains information relating to other people, as detailed in the background. The right of access regulated by the personal data protection regulations is not exercised here, but the right of access to public information, provided for in art. 105.b) de la Constitució Espanyola, el qual està regulat a la Llei estatal 19/2013, de 9 de desembre, de transparència, accés a la informació pública i bon govern, ia la Llei catalana 19/2014, del 29 de desembre, de transparència, accés a la informació pública i bon govern (hereafter, LTC).

In fact, the personal data protection regulations themselves were already in place aware of the existence of this other right of access. Thus, the RLOPD, in its art. 27.3 regarding the right of access established the following:

"3. The right of access is independent of what is granted to those affected by special laws and in particular Law 30/1992, of November 26, on the legal regime of public administrations and the common administrative procedure."

Law 30/1992 regulated in its articles 35.h) and 37 the right of access to archives and records, but Law 19/2013, of December 9, on transparency, access to public information and good governance, modified the wording of the two precepts indicated, in the following sense: "Citizens, in their relations with public administrations, have the following rights: (...) h) Access to public information, files and records" (article 35.h); "Citizens have the right to access public information, files and records under the terms and conditions established by the Constitution, the Transparency Law, access to public information and good governance and other applicable laws" (Article 37 ).

Subsequently, Law 30/1992 has been repealed by Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), so that the referral made by article 27.3 of the RLOPD to Law 30/1992 must be understood as carried out in article 13.d) of the LPAC, which provides that "Those who, in accordance with art. 3, have the capacity to act before public administrations, are holders, in their relations with them, of the following rights:

(...) d) Access to public information, files and records, in accordance with the provisions of Law 19/2013, of December 9, on transparency, access to public information and good governance, and the rest of the legal system."

This precept of the LPAC is therefore referred to the regulations governing transparency and the right of access to public information, a reference that in the case of Catalonia leads us to Law 19/2014, which recognizes in its article 18 the right of all people to access public information held by public administrations. And in the event that the response from the administration does not satisfy the applicant or does not receive a response within the period provided for the purpose, Law 19/2014 itself provides for a system of guarantees, among which the claim before the Commission for the Guarantee of the Right of Access to Public Information (GAIP), regulated in articles 39 et seq. of the Law. Consequently, as this Authority does not have the right to resolve this claim, the following is its inadmissibility, and the referral to the GAIP, being the competent body.

Aside from the above, it is not superfluous to note here that Law 19/2014 has provided for a case of access to public information that should be resolved in accordance with the legislation on the protection of personal data, and therefore the eventual claim against the lack of attention would correspond to this Authority. Specifically, in its article 24, it regulates access to public information that contains personal data, and foresees some limitations to the right of access, in order to protect the fundamental right to the protection of personal data. And in the same precept, in its 3rd section, it specifies the following:

"3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the legislation on the protection of personal data. "

In other words, Law 19/2014 has chosen to enshrine two systems of access to public information that contains personal data. On the one hand, if the information contains data relating to third parties other than the applicant, the general regime provided for in Law 19/2014 itself would apply, to which the limitations provided for would apply. And on the other hand, a special system for the case that the personal data contained in the requested information refer only to the person requesting, in which case the request will be processed in accordance with the right of access provided for to the personal data protection regulations, in which case this Authority would indeed be the competent institution to resolve the corresponding claim, in application of the personal data protection regulations, that is to say art. 15 of the RGPD from 05/25/2018.

But this is not the case, since the person making the claim here applied to the ICAT access to a report drawn up by the commission appointed by the Board of Governors of the College on the services provided by the Vahusari advocats firm to the ICAT, a report that, as can be inferred from the documentation provided by the claimant before the Authority , would in any case refer to people different from the one claiming here, specifically and apparently, to the members of the aforementioned firm.

3.- In accordance with what has been set forth in the 1st legal basis, since in accordance with article 141 of Law 40/2015, of October 1, on the legal regime of the public sector, the public administrations are obliged to respect the legitimate exercise by other administrations of their powers, the transfer of this claim to the GAIP is considered appropriate.

For all that has been exposed,

RESOLVED

First.- Dismiss the guardianship claim made by Mr. (...)against the Illustrious Bar Association of Tarragona.

Second.- Transfer the reference claim to the Commission for the Guarantee of the Right of Access to Public Information (GAIP), together with a literal testimony of the present resolution.

Third.- Notify this resolution to the Illustrious Bar Association of Tarragona and the person making the claim.

Fourth.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://www.apd.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 articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)