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# The Access to the Archives in Spain, Special Reference to the Archives of the Local Administration

AGUADO GONZALEZ, Francisco Javier - GARCIA RUIPEREZ Mariano, *The Access to the Archives in Spain, Special Reference to the Archives of the Local Administration*. Atlanti, Vol. 20, Trieste 2010, pp. 123-135.

*Original in English, abstract in English, Italian and Slovenian, summary in English*

*The archivist organizes and preserves the documentation in order that they can be used by the owners, or by other interested people. But this situation has varied over the years. The creation of the General Archive of Simancas in 1549 did not include the free consultation of documents deposited there, because they were only accessible for the official Administration and the official historians. And the access to the municipal archives depended on the previous authorization of the city councils. In this article we try to see the evolution of the access to the Spanish archives from then to nowadays, with special reference to the archives of the local administration.*

AGUADO GONZALEZ, Francisco Javier - GARCIA RUIPEREZ Mariano, *L'accesso agli archivi in Spagna, con particolare riguardo agli archivi delle amministrazioni locali*. Atlanti, Vol. 20, Trieste 2010, pp. 123-135.

*L'archivista organizza e conserva la documentazione allo scopo di renderla utilizzabile al proprietario, oppure alle persone interessate. Ma questa situazione è variata nel corso degli anni. La creazione dell'Archivio Generale di Simancas nel 1549 non comprendeva la libera consultazione dei documenti ivi depositati, poiché essi erano accessibili solamente all'amministrazione ufficiale ed agli storici ufficiali. E l'accesso agli archivi municipali dipendeva dalla preventiva autorizzazione del consiglio comunale. In questo articolo cercheremo di vedere l'evoluzione dell'accesso agli archivi spagnoli da allora ai nostri giorni, con particolare riguardo agli archivi delle amministrazioni locali*

## 1. The access to the Archives in Spain

The tasks that the archivist carries out have been defined in the more simple way as to gather, to conserve and serving the documents. We organize and we conserve the documentation so that it can be used by its proprietors (private or public), by the interested people and, if it is the case, by the historians. But this situation has varied over the years. The creation of the General Archive of Simancas in 1549, the first one in Spain with a general status, did not supposed the free consultation of the documents deposited there, because they only were accessible for the Administration and official historians. The access to the municipal archives depended on the previous authorization of the city councils, and almost always it supposed a cost for the interested people.

With the French Revolution a general process at European level begins to facilitate the access to the conserved documentation in the archives. In Spain they are open to the researchers by Real Order of 20 of April of 1844, although with great limitations, that will be disappearing throughout the XIXth and XXth centuries. It will be already in the middle of XXth century, with the renovation of the historical studies, when a remarkable height in the consultation of the documentation takes place, increased progressively as they increase the facilities of consultation and the cultural level of the society.

But in all the countries there are limitations for acceding to the documentation conserved in the public archives. Usually the documentation with an antiquity less than thirty years is not allowed for the consultation, although there are countries where this period it is fifty years. The variations in the restrictions of access to the documentation in the countries of the European Community were reflected in the work "The Archives of the European Union" (Luxembourg, 1994, P. 29-50). From the Council of Europe it is recommended a common policy that it favors the access to the public documents, with the due limitations, where the nationality of the applicant will not be a limitation. To this end the Committee of Ministers of the Council of Europe has elaborated two recommendations, nonbinding, directed to the governments of the identified Member States referred as "Numb. R (2000) 13" and "Rec (2002) 2". The recommendation approved in the year 2000 concentrates in the access to the public archives where documentation of permanent conservation

is preserved for a preferably cultural use, whereas the recommendation of the year 2002 it intends the access to all the public documentation regardless of his data or of the reason for the consultation.

The existence of limitations contradicts the position defended by the historians who center their studies in the most recent documents, in favor of the possible freest access.

The Spanish situation is regulated by the Art. b 105 of the Constitution of 1978: all the citizens have the right to the access to the archives and administrative registries. The Law 16/85 of Spanish Historical Heritage, in its Art. 62, indicates that the Administration of the State will guarantee the access to all the Archives, Libraries and Museums of state ownership, notwithstanding the restrictions that can settle down. The limitations of consultation of the documents that comprise of the Spanish documentary heritage are regulated in the Art. 57 of that Law. All the documents concluded their procedure and deposited in the central archives, are of free consultation, unless they are affected by the Law of Official Secrets, or its diffusion can involve risks for the security and national defense or the inquiry of the crimes. The documents that contain personal data of police character, procedural, clinical or of any other nature which can affect to the security of the people, its honor, the personal and familiar privacy, and its own image, could not be consulted without its express consent or have passed twenty-five years from its death, if its date is well-known, or fifty from the date of the document.

The Statutory law 5/92 of Regulation of the Automated Treatment of personal character data (LORTAD), (published the 31 of October of 1992), established that the personal data would not be treated nor by computer science nor be yielded to third parties without express consent of those, nor they would be possible to be used for an aim different from the authorized one. It understood by sensible data the referring to the ideology, the religious beliefs, the race, the health and the sexual life. These principles are also in the Statutory law 15/1999 of Protection of Data of Personal Character (LOPD) (published the 14 of December of 1999), that has replaced the LORTAD. In the LOPD it is expressed that they are personal character data "any information concerning identified physical people or identifiable". Between the data especially protected they appear regarding ideology, union affiliation, religion or beliefs, racial or ethnic origin, health and sexual life.

The Law 30/92, for the Legal Regime of the Public Administrations and of Common Administrative Procedure, approved the 26 of November of that year (published the 27 of November of 1992), in its Art. 37 indicates that the citizens have the right to accede to the registries and documents that, been part of a file, are in the administrative archives, whenever such files correspond to procedures finished in the date of the request. But the access to documents that contain information referring to the privacy of the people is reserved only to themselves (Art. 37. 2). The exercise of these rights can be denied when reasons of public interest prevail, by interests of worthier protection of third parties, or when therefore it is determined by the Law, having to dictate the competent organ, in these cases, a motivated resolution. The Art. 37. 5 established that the access could be possible with respect to the following files: 1) Those that contain

**AGUADO GONZALEZ, Francisco Javier - GARCIA RUIPEREZ Mariano, Dostop do arhivov v Španiji, poseben pogled na dostop do arhivov v lokalnih skupnostih. Atlanti, Zv. 20, Trst 2010, str. 123-135.**

*Delo arhivistov je v organiziranju in obranjanju dokumentacije in ima cilj v tem, da jo lahko uporablja uporabnik ali ljudje, ki so zanjo zainteresirani. Toda te naloge so se vedno spreminjale. Ko so v letu 1549 ustanovili generalni arhiv v Simanci (Simancas), takrat še ni bilo možno prosto dostopiti do arhivskega gradiva, ampak so lahko dostopali le tisti, ki so z njim upravljali in posebno določeni zgodovinarji. Tako je bil dostop do gradiva odvisen od dovoljenj mestnega sveta. V tem prispevku avtorja predstavljata razvoj in pot, kako se je v Španiji razvijala pravica do dostopa do arhivskega gradiva od srednjega veka do danes s posebnim ozirrom na arhive, ki jih upravljajo na lokalni ravni.*

#### SUMMARY

*The access to the Spanish archives has been different over the years. In this article we try to see the evolution of the access to the Spanish archives, with special reference to the archives of the local administration. The creation of the General Archive of Simancas in 1549, the first one in Spain with a general status, was only accessible for the Administration and official historians. The access to the municipal archives depended on the previous authorization of the city councils. With the French Revolution a general process at European level begins to facilitate the access to the archives. In Spain they are open to the researchers in 1844, although with great limitations, that will be disappearing throughout the XIXth and XXth centuries. It will be in the middle of XXth century, with the renovation of the historical studies, when a remarkable height in the consultation of the documentation takes place, increased progressively as they increase the facilities of consultation and the cultural level of the society. From the Council of Europe it is recommended a common policy that it favors the access to the public documents, with the due limitations. To this end the Committee of Ministers of the Council of Europe has elaborated two recommendations, the recommendation approved in the year 2000 concentrates in the access to the public archives where documentation of permanent conservation is preserved for a preferably cultural use, whereas the recommendation on 2002 it intends the access to all the public documentation regardless of his data or of the reason for the consultation. The Spanish situation is regulated by the Constitution of 1978: all the citizens have the right to the access to the archives and administrative registries. The Law 16/85 of Spanish Historical Heritage indicates that the Administration of the State will guarantee the access to all the Archives, of state ownership,*

*notwithstanding the restrictions that can settle down. All the documents concluded their procedure and deposited in the central archives, are of free consultation, unless they are affected by the Law of Official Secrets, or its diffusion can involve risks for the security and national defense or the inquiry of the crimes. The documents that contain personal data of police character, procedural, clinical or of any other nature which can affect to the security of the people, its honor, the personal and familiar privacy, and its own image, could not be consulted without its express consent or have passed twenty-five years from its death, if its date is well-known, or fifty from the date of the document. The Statutory law 5/92 of Regulation of the Automated treatment of personal character data established that the personal data would not be treated nor by computer science nor be yielded to third parties without express consent of those, nor they would be possible to be used for an aim different from the authorized one. It understood by sensible data the referring to the ideology, the religious beliefs, the race, the health and the sexual life. These principles are also in the Statutory law 15/1999 of Protection of Data of Personal Character. The Law 30/92, for the Legal Regime of the Public Administrations and of Common Administrative Procedure indicates that the citizens have the right to accede to the registries and documents that, been part of a file, are in the administrative archives, whe-*

information on the activities of the Government of the State or the Autonomous Communities in the exercise of their constitutional competitions, non subject to Administrative Right; 2) The ones that contain information on the National defense or the Security of the State; 3) The transacted ones for the inquiry of the crimes...; 4) Regarding the matters protected by the commercial or industrial secret; and 5) Regarding the administrative activities on monetary policy. In addition, according to the Art. 37. 6, specific dispositions regulate the access to archives submissive to norms on matters classified; to documents and files that contain personal sanitary data of the patients; to archives regulated by the legislation of the electoral regime; to archives that serve exclusively statistical aims...; to the Punished and Rebellious Civil Registry and the Central Registry of and to other registries of governmental function regulated by Law; to documents in public archives of the Local members of the Legislative chambers, Autonomous Communities, and Local Corporations; and the consultation of documentation in the historical archives.

That right of access supposes the right to obtain copies or certificates of the documents whose examination is authorized by the Administration (Art. 37. 8).

Finally the Law 38/95 of access to the information in the matter of environment (published the 13-XII-1995), in the application of a directive of the EEC, recognizes the right of any physical or legal person to accede to the information about environment that is in the power of the public Administrations, determining a term maximum of two months to grant the information asked for, and establishing the assumptions in that this information can be denied. This right to is extended to all the nationals who belong to the EEC, and the term of resolution is reduced to only two months, against the three contemplated in the Law 30/92.

This law (38/95) is of application to all the documentation referring to the state and all activity that can be exerted on natural waters, air, ground, earth, fauna, flora and natural spaces, and to the plans and programs of management of the environment.

In these years the ministries have regulated the access to their archives developing the principles contemplated in the Law of the Spanish Heritage, and creating their own examining document commissions<sup>1</sup>.

In addition by Real Decree 139/2000 of 4 of February of 2001 (published of 11 of February of 2001) was created the Superior Examining Commission of Administrative Document, anticipated in the article 58 of the Law 16/1985, which has between its competitions to study and to consider the access to documents. The procedure that must be followed for the elimination of the state documentation is established in the Real Decree 1164/2002, of 8 of November. Also the totality of the Autonomous communities established in their laws of archives or documentary heritage different articles regarding the access in the line marked by the state legislation. In Catalonia, by his Law 10/2001 of Archives and Documents, it is created the National Commission of Access, Evaluation and Documentary Selection.

Also the Autonomous Community of Castilla-La Mancha has approved the creation of a Commission of Access to the documents

1. For example: Ministry of Foreign office by Order of 2 of April of 1991 (Published the 11 of April of 1991), the Ministry of Presidency by Order of 24 of April of 1997 (Published the 30 of April of 1997), the Ministry of Defense by Real Decree 2598/1998 of 4 of December (Published the 19 of December of 1998), the Ministry of Interior by Order of 21 of December of 2000 (Published the 4 of January of 2001), the Ministry of Economy by Order of 30 of July (Published the 7 of August of 2003, and Published the 12 of February of 2005), the Ministry of Science and Technology, by Order of 23 of July (Published the 5 of August of 2003), the Ministry of Economy (Published the 29 of October of 2003), the Ministry of Public Administrations (Published the 24 of October of 2003), the Ministry of Education, Culture and Sport (Published the 28 of November of 2003), the Ministry of Industry, Tourism and Commerce (Published the 26 of November of 2004), the Ministry of Public Works and the Economy (Published the 10 of March of 2005) and the Ministry of Public Administrations (Published the 24 of March of 2005).

in the archives of the Council of Communities (Art. 19 of the Law 19/2002 of Public Archives of Castilla-La Mancha). As advisory organ is the one in charge to establish the criteria of access but only for the archives that form part of the subsystem and control systems of the autonomic administration. It has not application with respect to the archives of the local organizations of the region, neither in those of the University, nor in those of Cortes, nor in the one of the Consultative Council of Castilla-La Mancha. The second chapter of this law (arts. 34-42 is dedicated to regulate the access right. In its Art. 40,1 is established like general norm the free access to documents deposited in public archives “from thirty years of having finished its proceeding or administrative use” unless they are protected by express disposition of law. Those that contain personal data maintain the terms established in Law 16/1985, of twenty-five years from the death of the affected people or of fifty years from the date of the document (Art. 40,3). This restrictive vision of the access is a step back in relation to the general legislation and with the application of the principle of hierarchy of norms, but the stipulated in the state legislation prevails.

The access to the municipal documentation is also established in the Law 7/1985, which regulates the Bases of the Local Regime (published the 3 of April of 1985) and in Real Decree 2568/1986 (published the 22 of December of 1986), without forget the specific norms approved for the local administration by some Autonomous Communities. One of the most evident examples in some regulations of municipal archives is the regulation of the municipal Archive of Getafe (Madrid) (published the 22 of January of 1998). In some of these regulations the limitation of the access is considered like a type of sanction.

In the last years some archives (State and Autonomous ones especially) have approved the denominated letters of quality or letters of services that suppose the detailed way and in writing form of the rights of the citizens in relation to the access to the documentation. The city of Barcelona, and therefore its Archive, has been pioneering in this process.

Therefore, there is public documentation that can be consulted by the researchers just transacted and deposited in the public archives, but there are documents whose access is restricted by different motivations. The private archives in private hands only can be consulted with the authorization of the proprietors. The Law 4/1990 of Historical Heritage of the Autonomous Community of Castilla-La Mancha establishes, in its Art. 33.c that the documents reunited by the private people or institutions are of free consultation whenever they have an antiquity superior to one hundred years. However, this disposition is very difficult to apply.

With the indicated legal limitations, there are others not less important. We are talking about:

- The technicians and humans resources existing in each archive (systems of reproduction, schedules of opening, periods of vacations, assigned personnel).
- The amount of existing documentation and its state of conservation.
- The level of organization of the archive and finding aids.

*never such files correspond to procedures finished in the date of the request. But the access to documents that contain information referring to the privacy of the people is reserved only to themselves. Finally the Law 38/95 of access to the information in the matter of environment recognizes the right to accede to the information about environment that is in the power of the public Administrations, determining a term maximum of two months to grant the information asked for, and establishing the assumptions in that this information can be denied. In addition by Real Decree 139/2000 was created the Superior Examining Commission of Administrative Document, which has between its competitions to study and to consider the access to documents. Also the totality of the Autonomous communities established in their laws of archives or documentary heritage different articles regarding the access in the line marked by the state legislation. But It has not application with respect to the archives of the local organizations. The access to the municipal documentation is also established in the Law 7/1985, and in Real Decree 2568/1986, without forget the specific norms approved for the local administration by some Autonomous Communities. But there is disparity of criterion in the different municipal archives. The private archives in private hands only can be consulted with the authorization of the proprietors. With the indicated legal limitations, there are others not less important: the technicians and humans resources, the amount of existing documentation and its state of conservation, and the level of organization of the archive and finding aids. The main obstacle that offered the consultation of the municipal archives during the Old Regime depended more on its organizational and descriptive situation and the formative deficiencies of the possible researchers that by the excessive secrecy that could defend the local authorities. We must also pay attention to the norm that regulates the intellectual property considering that in the archives are conserved projects, planes, scale models, drawings or photographs susceptible to yield author rights. The present legal status is contemplated in the Real Legislative Decree 1/1996 that approves the right of the archives of public ownership among others institutions, to reproduce the works, without lucrative purpose and for aims of investigation, without needing asking for authorization to the holders of those rights nor to give them any remuneration.*

To this it is necessary to add the own limitations of the investigators (historical knowledge, dominion of Paleography, etc.).

In the archives of state ownership depending of the Central Administration until November of 2006 it has been demanded for the consultation of its fonds, the presentation of a National Card of Investigator granted in those same centers to the users who went with regularity to those archives, in accordance with the norm established in the Real Decree 1969/1999 of 23 of December (published the 13 of January of 2000). But this requirement has been already eliminated, so that now to accede to the documentation is enough with the presentation of the national identity document. In the archives of the local Administration usually is not required any type of card. All the Spanish people with more than 18 years can in theory to consult their archives, and the same happens with the foreign citizens. The private archives establish their own rules.

## 2. The access to the municipal archives

During the Old Regime the municipal corporations controlled the use of the documents that formed their archives, putting under their previous approval any opening of the coffer-archive. In addition some of the members, in the condition of keepers of the keys, commissioners of the archives or civil servants archivists, were present whenever some original document exit, preferring to give copies. Even they used to take measures to guarantee the confidentiality in the diffusion of the obtained data of his documents.

A requirement for the consultation was the previous approval by the municipal corporation. The content of the archive, known through the finding aids that could exist, was varying throughout so ample period of time, but we know that until end of the XIXth century rarely it surpassed hundreds of Bundles, and that in the most important cities, remaining, generally, outside the system of protection and control harnessed by the Catholics Kings for the most important documents as the fiscal act books, accounts, registers, etc.

Not in vain the most of the documents of the archives of the common were the privileges and other documents sent by the real and nobility chancelleries, the lawsuits and sentences, the files of defining of terms and others of this nature that concerned to the common of the neighbors and to the interests of the oligarchy that dominated those corporations. The use of these documents, written in different fonts and different languages, required specific knowledge of the possible user that were within reach of very few people in the Old Regime. In addition the opening of the archive, and the document transcription or copy, supposed expenses that all people could not afford.

Approved the request by the city council, the following step was to determine the date and hour to open the archive, summoning for it to all the guards of the keys, to the interested person, and to the public notary of the city, if he were not one of the key guards. Then the archive could be open, to look for the required documentation, and to make a copy, or to give the original one, to the applicant, not without first to take the sufficient guarantees that they assured his return.

The opening of the archive did not supposed the exit of the document of the consistorial houses, since its consultation could be done in some municipal dependency. Fewer rigors were demanded when the receiving one was another local authority usually for the management of municipal interests, or appointed to the courts of justice and the Councils.

The average of people on the total of the population who knew to read and to write in the Old Regime was very meager. Among them very few could read successfully the old document by themselves, with different fonts and in different languages. In addition the opening of the archive, once obtained the authorization, meant a good payment of money since, generally, it were necessary to pay to the keepers of the keys by his attendance.

The most rigorous control was fitted almost exclusively to the archive of the privileges or the common documents, constituted by a documentation in which often the books of agreements, the registers, the letters of vicinity, and the accounts books were conserved in other dependencies and under the direct responsibility, and often unique, of the notary public of the council or the accountant. For that reason the possible interested people preferred to ask for a copy, or simply a testimony of their content. The municipal public notary by his condition of notary asked for dispatch a document and in force acquired the corresponding rights according to the tariff. Therefore the documents more demanded by the neighbors would be outside the archive of the common, and to its disposition through the public notary of the council, that obviously did not have any interest in which those documents entered in the archive of the city. The existence in all the archives of those copies, or certificates sent by municipal public notaries, attests this information.

In very few occasions the local corporations denied the consultation of their archives. At the most they could put some type of impediment that prevented temporarily its consultation. If the applicant maintained some process open against the city council, sooner or later it would be some resolution of the courts forcing to the local corporations to open their archives.

The main obstacle that offered the consultation of the municipal archives during the Old Regime depended more on its organizational and descriptive situation and the formative deficiencies of the possible researchers that by the excessive secrecy that could defend the local authorities.

During the Medieval and Modern age, the most habitual consultations of the archives of the privileges or the common usually were done by the local oligarchy, that needs to examine by themselves or with the help of the public notary, the documents who can help them to justify its nobility, its entrance in the military orders, or the obtaining of any other rights. Also there will be some, very few, that approach the municipal archives to write the history of the locality, or some other study of historical character.

The document consultation of the municipal archives to make studies with historical, hagiographical or religious purposes, and with divulging pretensions, was very sporadic until the XIXth century. However, they do not lack histories of localities, lives of saints, reli-

gious orders, etc., that are conserved, written by hand generally, and that were done throughout the Old Regime, not only in the XVIIIth century. There is no doubt that during the despotism period the cultural currents facilitated the use of the archives during the century of the Reason, and laid the way towards the historical positivism of the XIXth century, but the archives, also the municipal ones, were used to know the past history from time before. In addition, we can't forget that almost the totality of the people that went to the municipal archives during the Old Regime made it to solve personal problems and, therefore, very few approached them motivated by their scientific curiosity.

It has been written too much about the importance of the Real Order of 20 of April of 1844 that allowed the access to the archives, although with many limitations and without the specifically mention to the local archives. The later norms have been studied in multitude of works. But we think that all those dispositions will have a minimum incidence in the municipal archives until entered the XXth century. First because its application only could be effective in those populations that had an archivist and these were very few cities (they possibly did not reach more than twenty in the XIXth century). Secondly because the number of users of these archives in this period is much reduced. The historiographical currents that affected the study of the local realities strengthen as advances the XXth century, and they will do it using as it bases documents of the great National Archives. The organizational and descriptive state of the municipal documentary fonds did not animate to its use. Avoiding to the possible investigators with cultural purposes, the citizens rarely went to consult the documents that kept the local archives among others causes because in his immense majority they did not know to read nor to write and they did not know the possible utility that could report to them for the defense of its personal interests.

The principal change in the consultation of municipal documents will be especially whit the increase of the alphabetization of the Spanish society, during the first decades of the second half of the XXth century. This process happened in parallel with the renovation of the historical studies that harnessed the approach to the knowledge of the local realities. The new pedagogical currents also defended an education in which the boy developed his aptitudes in his nearer surroundings. He was high-priority that they knew its district, its town or its region.

The Spanish society, in this period, enjoyed a cultural level until then stranger with a very high percentage of university students, and with a progressive reduction of the number of illiterates. The Constitution of 1978 allowed that the city councils assumed competitions and resources, and the citizens began to exert their rights and obligations in freedom. And one of the pillars that allowed giving an answer to the needs of information of the neighbors was in those wooden bookcases that kept the bounds with documents that now many people could read. The services of the archives, with the grant of average personal and economic and technicians means, will then to give answer to the needs of the own local administration, and secondly to satisfy the cultural needs of the citizens. And those cities that already had archivists will now to do these services with more and better means.

The problems of access to municipal documents changes since the end of the decade of 1970, when changes the profile of the user. Now is the citizen who wants to know, without intermediaries, the document content that can affect to him. And this right can enter in collision with other rights also worthy of protection. The restrictions to the access had an ample norm in Spain, and those restrictions had, and have, their detractors and defenders.

The Spanish Constitution of 1978 is very clear when gathering in its article 105.b that all the citizens have the right to the access to the archives and administrative registries, just as do the law 16/1985 of Spanish Historical Heritage. The limitations of consultation of the documents that comprise the Spanish documentary heritage are regulated in Art. 57 of that law: all the documents concluded their procedure and deposited in the central archives, are of free consultation, unless they are affected by the Law of Official Secrets, or its diffusion can involve risks for the security and national defense or the inquiry of the crimes. The documents that contain personal data of police character, procedural, clinical or of any other nature which can affect to the security of the people, its honor, the personal and familiar privacy, and to its own image, could not be consulted without its express consent or have passed **twenty-five years** from its death, if its date is well-known, or **fifty** years from the date of the document.

This norm is one of which more incidence has in the access to municipal documents. And not by the possible existence in the local archives of documents protected by the Law of Official Secrets or whose diffusion can involve risks for the security and national defense nor by them related to the inquiry of the crimes (police or judicial documents) or of sanitary content. But many documents contain personal data whose diffusion can affect its honor, to its personal privacy or its own image, protected by the terms indicated in that law. The problem is determining what information in those documents is the one that must be protected, as say the Law 30/1992, of Legal Regime of the Public Administrations and of Common Administrative Procedure, approved the 26th of November of that year.

The municipal archivists, when they must inform about the exercise of the access right, must lean in their legal and archival knowledge, and decide in case of reasonable doubt on the most prudent position<sup>2</sup>. To conciliate all the rights is sometimes impossible, and is better than the decision on conflicting subjects will be taken by associated organs whose purpose is to distribute justice and to interpret the laws. And this solution does not reduce the professionalism of the archivist. Especially, considering that the access right to the documents, as it is established in the Art. 37,8 of the Law 30/1992, permit to obtain copies or certificates of documents or, which is the same, its public diffusion.

The limitations established in the Art. 37 of Law 30/1992 applied to the city councils archives, would concentrate in the documents that contain personal character data (registers, electoral rolls, files of work license, social histories, disciplinary files...) or that are protected by the normative on intellectual property (technical projects, photographs...).

2. The Penal Code, in its articles 414 and 415, sanctions the civil servant who allows the access to restricted documents.



The existence of computerized files with sensible data in the local administrations has tried to be regulated in the last years with dispositions sometimes of little use and confused interpretation. The Statutory law 5/1992, of Regulation of the automated treatment of personal character data, more well-known like LORTAD, established that the personal data could not be tried by computer, neither to yield them to third parties without express consent of those, nor could be used for an aim different from the authorized one. It understood by sensible data the referring to the ideology, the religious beliefs, the race, the health and the sexual life. This Law was soon countermanded but their principles were picked up in the statutory law 15/1999 of Protection of personal character data (LOPD). In the LOPD it is expressed that they are personal character data “any information concerns identified or identifiable physical people”.

The existence of sensible data, as it understood by the LORTAD, in municipal documents is not significant, but if we considered any information of physical people that it allows its identification (to know its full name, their age, its birthplace, its address and its national document of identity, it is evident that this information appears usually in many municipal documents. And here the terms established in the Art. 57 of the Law 16/1985 acquire all their sense.

The regulation of the computerized registries that contain personal character data, in accordance with the content of the Law 15/1999, has obliged to the city councils to do public the existing files existing in its offices with those characteristics, indicating its purpose, the people or groups of which they have information, the procedure for collection the data, the structure and description of the files, the cession of information to third parties, the responsible organ, and the administrative unit in which the rights of access, rectification and cancellation can be exercised. The practical totality of the Spanish city councils has at least, registries of that type to the management of the tributes, of the municipal register of inhabitants, and the entrance and exit of correspondence. But these registries maintain their use administrative and for that reason they are used and updated continuously. The arrival of copies of these files to the municipal archives is not something that is standardized. The data bases created in these centers for the control of documents, or their description, hardly can be affected by the content of the LOPD. Only the sensible series already indicated can contain that type of information but usually it is not easy the clear “identification” of the people who appear in that documents.

We must also pay attention to the norm that regulates the intellectual property considering that in the archives are conserved projects, planes, scale models, drawings or photographs susceptible to yield author rights. The present legal status is contemplated in the Real Legislative Decree 1/1996 that approves the text recasted of the Law of Intellectual Property. In its article 37 is clear the right of the archives of public ownership among others institutions, to reproduce the works, without lucrative purpose and for aims of investigation, without needing asking for authorization to the holders of those rights nor to give them any remuneration. The question is delimiting the concept of “investigation” (if it implies or not his diffusion in any municipal publication, including his Web), or in determining if the

file can allow the access, and therefore the reproduction, to a third party that asks for it. And we can't forget that these rights extend during seventy years, after the death of the author.

The state normative frame is completed with the general dispositions approved to regulate the local regime. We refer to the Law 7/1985, Real Decree 2568/1986 (ROF) and to the Law 57/2003 for the modernization of the local government. The first one talks about the right of access to the municipal documents by the neighbors (Art. 18.1e and 70,3), the councilmen (arts. 20,3 and 77) and of other administrations (Art. 56), in accordance with the legislation established at that time. The ROF (1986), especially in their articles 14-16, develops the right of access by the councilmen, members of the team of government or the opposition, distinguishing two differentiated procedures, in accordance with the content of documents and to the condition of the applicant. There are very few regulations with respect to the right of the neighbors to consult the municipal archives and registries (Art. 207) or to know the state procedure of a file in which they are interested (Art. 180). It is much more clear the Law 30/1992. He will not appear more developed either in the Law 57/2003, in which the content of the Art. 70,3 of the Law 7/1985 will be copied.

In summary, the general norm on local regime is only useful to know the regime access of the councilmen to the municipal documents. Those mentioned articles of ROF will form the base of the texts used in many organic regulations approved by many city councils.

All these state norms have had their counterpoint in the laws of archives or documental heritage approved by the autonomous communities in which they have contemplated articles regarding the access in the line marked by the state legislation. For example in Castilla-La Mancha remember the documents whose diffusion can affect to the personal and familiar right privacy, or "on penal or administrative infractions of police, procedural or tributary character, or those that they reveal the ideology, union affiliation, religion, beliefs, health, racial or ethnic origin, and sexual life", or the documents that contain subjective appreciations or judgments of value on the physical people who can affect to their honor or image. This norm allows, like something exceptional, the possibility of authorizing the consultation of those protected documents whenever in those copies the confidential information had been suppressed. Nevertheless, the Law 6/1991, of archives and documentary heritage of Castilla and Leon, establishes the term for the document consultation that affects to the personal and familiar privacy in one hundred years to count from their date of writing or fifty from the date of death of the person if this one is known.

The right to access to the archives implies to obtain copies or certifications of its content. But it can be limited if the state of conservation of the document is deficient or there is risk of its deterioration, or is protected by the legislation on intellectual property; also if the number of documents asked for reproductions can't be afford by the public services.

We must remember that those documents always can be con-

sulted by other people if the affected ones give in writing their express consent.

This state and autonomic normative has been developed in some city councils through the regulations of its municipal archives. In all of them there are articles dedicated to the access.

But there are many other documents theoretically of free access that contain confidential information, therefore, to determine the accessibility to the municipal documentary series the archivist must always use all knowledge, examining each document.

Although there are some contradictions, for example the files of private work license: in some archives the access to these files is totally open, in other archives these same documents can be consulted but not be obtained copies of the planes, although they are of its own house. The restriction of access in this sense is related to the plagiarism that can undergo these work projects. In other cases the planes that are in these projects have nominative character and the access to them only can be exerted by the holder or people with a legitimate and direct interest.

However, in all the administrative procedures in which the opening of a term of public information is contemplated like, for example, in the opening of new buildings or offices the information data are exposed in planks of municipal announcements and this allow to identify perfectly the applicant (including full name, mailing dress, etc.). The same happens with the admitted lists of selective processes, where appears the full name of the candidates, etc.

Also in some archives the access “to all the documents” conserved in the municipal archive it is allowed to the investigators, whenever they credit historical, scientific or cultural interest, and previous commitment in writing of which they will guarantee the privacy of the people. And to have more security of this privacy it will not given any copy of documents of restricted access.

Therefore, it could be advisable that the requests of administrative document consultation will be in writing, and be registered in the general register of the city council. This way, if it were understood that the order has some type of limitation of access, it will be able to be required the opportune information and to be written up the motivated resolution. All this procedure is simplified in the case of historical documents, in which it is enough to fill up the request form existing in each archive. Some municipal archives, require also for the consultation of the historical documentation, the presentation of a “Researcher card” sent by the own archive. Nowadays, however, this is not very used, in accordance with the state norms for access to the archives.

As we see, there is disparity of criterion in the different municipal archives. For example, some of them do not let to the investigators to take copies with digital cameras, and in other archives it is preferred

Some archives have elaborated norms to consult documents in the researching room: to keep silence, of not writing on documents, not doubling them or to trace them, or other norms regarding esta-

blishing a maximum of documents consulted per hour or day. Also, in some municipal archives it is demanded to be eighteen years old to consult historical documents.

In the norms of the autonomous communities on documentary heritage and in the regulations of municipal archives it is contemplated the service of loan at the request of the producing offices. In relation to the access the main problem is establishing a term from which the documents can't leave the archive nor to requirement of the producer office. In Seville, for example, the documents of more than fifty years of antiquity can't be lent. In other cities the term, to exist, is different.

Another question is if they can be lending to offices different of the producers. In each municipal archive, because of the local conditions, it will be possible to take the most coherent decision.

There are, also, differences on the term of return of the lent documents, in some archives there are no limits, in others, with better criterion, has been settled down a period for the return of documents to the archive.

However, we must remember that the documents are conserved in the municipal archives because its content is of interest for the citizens and the city councils. They are useful. To determine who can accede to them and in what conditions are a basic function of the municipal archivists.

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