

Ref.: CNS 20/2018

**Opinion on the query made by a public entity, in relation to access to the employment and remuneration information of the entity's staff.**

A letter from a public entity is submitted to the Catalan Data Protection Authority, in which it is requested that the Authority issue an opinion in relation to the request for access to labor and remuneration information of the staff entity

Specifically, as detailed in the query, this is the information requested:

- The workforce, the list of jobs and the remuneration regime that in any case includes the full gross remuneration - basic and complementary remuneration - of each of the organization's workplaces, including the contingent staff and those hired as advisers all the political groups established from January 3, 2011 and up to the present date.
- Names and surnames of the people who occupy each of the jobs, including the temporary staff and those hired as advisers of all the political groups established in the entity from January 3, 2011, as purely identifying data in the terms of section 24.1 of Law 19/2014, of 29 December and opinion 13/2016 of the APDCAT.

Having analyzed the query, which is not accompanied by any other documentation, and in accordance with the report of the Legal Adviser, I issue the following opinion:

I

(...)

II

Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), applies "to personal data recorded on physical media, which makes them susceptible to treatment, and to any modality of subsequent use of this data by the public and private sectors." (article 2.1), understanding by personal data any information referring to identified or identifiable physical persons" (article 3. a). The labor and remuneration information of public employees is personal information that remains subject to the LOPD.

According to article 3.i) of the LOPD, "any disclosure of data made to a person other than the interested party" constitutes a transfer or communication of personal data. In general, personal data can only be communicated to a third party for the fulfillment of the purpose directly related to the legitimate functions of the transferor and transferee, with the

prior consent of the interested party. However, article 11.2 a) of the LOPD enables the transfer of personal data without the consent of the interested party when this is covered by a rule with the rank of Law.

In this line, the new Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016 relating to the protection of natural persons with regard to the processing of personal data and the free movement of these data, (General Data Protection Regulation RGPD), in force since May 25, 2016, and which will be applicable from May 25, 2018 (Article 99 RGPD).

Article 6 (RGPD) establishes that there must be a basis that legitimizes the treatment, either the consent of the affected person, or any of the other circumstances provided for, such as that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (6.1.c)), or that "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment" (6.1.e) ), and this is recognized on a legal basis in accordance with the provisions of sections 2 and 3 of the same article.

Section 3 of this precept provides: "The basis of the treatment indicated in section 1, letters c) and e), must be established by:

- a) the Law of the Union, or
- b) the law of the Member States that applies to the person responsible for the treatment.

The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of conferred public powers to the person responsible for the treatment. Said legal basis may contain specific provisions to adapt the application of the rules of this Regulation, among others: the general conditions that govern the legality of the treatment by the person in charge; the types of data object of treatment; the interested parties affected; the entities to which personal data can be communicated and the purposes of such communication; the limitation of the purpose; the periods of data conservation, as well as the operations and procedures of treatment, including the measures to guarantee legal and equitable treatment, as well as those relating to other specific situations of treatment in accordance with chapter IX. The Law of the Union or of the Member States will fulfill an objective of public interest and will be proportional to the legitimate aim pursued."

Recital 45 of the RGPD states that when the treatment "...is carried out in fulfillment of a legal obligation applicable to the person responsible for the treatment, or if necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers, the treatment must have a basis in the Law of the Union or Member States. This Regulation does not require that each individual treatment be governed by a specific rule. A rule can be sufficient as a basis for various data processing operations based on a legal obligation applicable to

responsible for the treatment, or if the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers. The purpose of the treatment must also be determined by virtue of the Law of the Union or of the Member States.(...)"

Law 19/2014, establishes in article 18 that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any person legally constituted legal entity", (section 1). The mentioned article 2.b) 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 the which are supplied by the other obliged subjects in accordance with the provisions of this law".

The information requested is "public information" for the purposes of transparency legislation and remains subject to the access regime provided for in this Law. However, the right of access is not an absolute right, and in accordance with article 20 and s. of Law 19/2014, may be denied or restricted for the reasons expressly established in the laws.

Specifically and with regard to access to information that contains personal data, it will be necessary to assess the nature of the personal data affected, apply the criteria provided for in articles 23 and 24 LTC, analyze the specific purpose of the access and determine what is the personal information that would be strictly necessary for the fulfillment of this purpose, which must be framed within the object of the Law described in article 1.2 LTC.

In the case at hand, different information is requested:

- a) Information on the workforce and the list of jobs.
- b) The remuneration regime that in any case includes the full gross remuneration - basic and complementary remuneration - for each of the jobs, including temporary staff and those hired as advisers to all political groups established from January 3, 2011 and until the present date.
- c) Identification with first and last names of the people who hold or have held each of the jobs, including the temporary staff and hired as advisors of all the political groups established in the entity, established as of January 3, 2011 .

Although the three issues are closely related, we will analyze them separately.

It seems clear from the outset that the access request being analyzed does not involve access to specially protected data referred to in Article 23 of Law 19/2014, given that it is only of identifying data, data relating to the workplace and data on full remuneration.

In this sense, and with regard to the information requested that is not considered specially protected, article 24 of Law 19/2014 establishes:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that

contains merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

2. If it is other information that contains personal data not included in article 23 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in disclosure and rights of the affected people. To carry out this weighting, the following circumstances must be taken into account, among others:

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. (...)."

### III

As regards the information on the workforce and the relationship of workplaces (RLT), this information does not in principle contain information of a personal nature. The LRLT refers to the place and not the person occupying it.

However, this information, put in relation to the people who occupy a job - and with certain unique jobs this can be done with some ease - can end up offering information about the person who occupies a certain position (qualification, remuneration approximate gross, city where he works, etc.), and therefore can indirectly offer information about a person.

Regarding this, the Transparency Law, in regulating active advertising, establishes the obligation to publish "the list of jobs for official, labor and casual staff, and the staff and the list of temporary contracts and non-related internships to any workplace in said list of positions." (art. 9.1.d) of Law 19/2014).

To the extent that this information must be public, from the point of view of data protection there would be no inconvenience in handing over the list of jobs, the workforce and also, if it were the case, "the list of contracts temporary and interning jobs not linked to any job in the aforementioned list of jobs". In fact, both the workforce and the LRLT for the years 2016, 2017 and 2018 can be consulted on the entity's corporate website.

From the content of the request it can be understood that the documents corresponding to the years 2011-2018 are requested. It is true that the active advertising obligations (title II) derived from Law 19/2014, are applicable for local bodies up to from December 29, 2015. This, however, does not mean that through the exercise of the right of access you can access this information referring to previous years. The publication of this information on the transparency portal explicitly presupposes the public interest in knowing it.

On the other hand, the passage of time is also an element that plays in favor of access, and for

therefore, it should not pose any problem from the point of view of the protection of personal data to hand over the information referred to the requested templates and RLTs through the exercise of the right of access.

#### IV

With regard to the information on the gross remuneration (basic remuneration and supplements) of each of the jobs, it must be taken into account that this information makes it possible to draw up an economic profile of the person who occupies the position, either direct, for the places that facilitate the identification of the person who occupies it, either indirectly when it comes to places that can be related, by other means, without disproportionate effort, to the people who occupy them.

In this case, on the one hand, the remuneration of each of the jobs is requested, and on the other, in a second section, the name and surname of the people who occupy each of these positions, and therefore, it would only be necessary to relate a and another document to identify all the workers and know the remuneration associated with the job they occupy.

In matters of remuneration, Law 19/2014 obliges public administrations to publish this information in two different ways: one, through the individualized publication of "remunerations, compensations and allowances, activities and goods, remunerations, compensations and allowances, the activities and assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of the public bodies, societies, foundations and consortia, and the compensations that they must stop receiving when they stop exercising the position ." (art. 11.1.b)); the other, through the publication of "the general information on the remunerations, compensations and per diems received by public employees, grouped according to the levels and bodies." (art. 11.1. e).

In accordance with these forecasts, the local administration must publish individually and for each workplace the information on all the remuneration received (full amount for any type of remuneration, compensation or allowance) of those people who have the consideration of senior positions, while with regard to the rest of the staff, the publication of remuneration (including compensations and per diems) is foreseen in a generalized way and grouped according to the functions of the levels and bodies.

For the purposes of Law 19/2014, and in accordance with article 4.2.b), they are considered senior positions: "At the service of the local administration, local representatives and the holders of superior and managerial bodies , in accordance with what is established by the legislation of the local regime."

In the case of the entity, the local representatives - president and members of the Metropolitan Council - on the one hand, and the manager and the managerial positions of each of the corporation's government areas would be included as senior officials .

For this purpose, article 14.3 of the Metropolitan Organic Regulation (BOPB of January 7, 2013), provides in point 3 that "Each of the areas may have a director attached who, based on the guidelines established by the councilor or councilor responsible for the area and under the superior direction of the Management, will exercise senior management and coordination of the assigned services

in the respective government area. The directors will be considered managerial personnel and will be appointed and dismissed by the Metropolitan Council at the proposal of the Presidency."

Section 4 of this article adds: "In addition to the director, in each area there may be one or more directors of services who will depend on him and who will be considered as managerial staff, being appointed and dismissed by the Council Metropolitan at the proposal of the Presidency."

The same Transparency Law therefore recognizes the public interest in the knowledge of this information from the point of view of the evaluation of the management of public resources by obliging the entity to publish the remuneration information of its senior charges and therefore, there should be no impediment to handing over this information through the exercise of the right of access.

Beyond senior positions, the possibility of accessing the individualized remuneration information of other public employees through the exercise of the right of access has been analyzed in previous opinions and reports (CNS 42/2016, IAI 9 /2016, IAI 12/2017, IAI 36/2017, IAI 4/2018 among others), which can be consulted on the APDCAT website [www.apdcat.cat](http://www.apdcat.cat).

In this sense, it is considered that the criterion that the Transparency Law uses for senior positions in the Administration can be extended with respect to personnel who occupy positions of trust, of special responsibility within the organization, of free appointment, or that entail a high level of remuneration. Although in these cases the law does not provide for the publication of their remuneration on the Transparency Portal, it must be taken into account that these are positions that, due to their uniqueness and/or the level of remuneration they usually bring associated, the knowledge of their remuneration may be relevant to the control of the use of public resources.

This would include temporary staff hired as advisers to the metropolitan political groups referred to in the application. These people are hired at the expense of the corporation's public budgets. These are trusted personnel of the governing bodies or the different political groups, chosen with discretionary criteria. Access to this information would allow the citizen to form a critical opinion in relation to the cost of human resources in this type of advisory tasks in the different areas of action. As the Authority has pointed out on previous occasions, it is precisely in those cases where the action of the administration is more discretionary that access to information acquires special relevance, for purposes of transparency. Therefore, it would also be justified to provide individualized remuneration information on these jobs.

The information requested covers the year 2011 to the present, and therefore may affect people who do not currently hold these temporary or trust positions. Knowing the remuneration of these people would allow the citizen to be able to see and compare the costs that the entity has represented by hiring temporary staff. It does not seem that the passage of time or the fact that a certain person no longer occupies the place, is a criterion that should restrict the right of access. On the contrary, in these cases, the attachment to the right to data protection would be less than the knowledge of the current remuneration. The passage of time is precisely one of the circumstances to be taken into account when weighing, in accordance with article 24.2.b) LTC.

For all this, the right to data protection of these people should yield in favor of the public interest in the knowledge of the information.

However, it is necessary to remember the importance of transferring the request for access to these people, for the purposes that they can allege what they consider appropriate in defense of their rights and interests, as provided for in article 31.2 LTC . This would make it possible to know if there are specific personal circumstances that advise the limitation of access with regard to any of the affected people.

For the rest of the staff, in principle, given that these are positions with a lower level of responsibility, and consequently with a lower level of remuneration, the evaluation of the use of public resources can be made by having the information on the remuneration of grouped by category or according to the different types of workplace.

It must be borne in mind that the publication of the income of a natural person facilitates the obtaining of an economic profile of the affected person which may end up causing him harm, both in the professional field and in front of institutions financial, social etc. For this reason, it does not seem to be justified to provide generalized access to the remuneration received by each specific worker, beyond the possibility of providing information on remuneration grouped by category or according to the different types of jobs, and the which follows from the LRLT, given that these alternatives allow an evaluation of the use of public resources without unnecessarily sacrificing the right to data protection of the persons affected.

v

As regards the identification with the first and last names of the people who hold jobs in the entity, this is merely identifying data linked to data relating to employment.

In accordance with article 24.1 LTC the merely identifying data related to the organization, operation or public activity of the Administration, which includes the identifying data of the people who have intervened in the files due to their functions, or about the people who certify the information requested and whenever it is data that is strictly necessary for the exercise of these functions, in principle access should be granted unless some special circumstance requires the protection of the affected person

This means that in principle there would be no problem in being able to identify the people who have intervened due to their position in the processing of a procedure or, in the case of the companies affected by the request, the workers who have had a relationship with users in the provision of a certain service.

Article 9.1.b) of the LTC imposes the obligation to actively publicize "...the identification of those responsible for the various bodies and their professional profile or career." It must be understood that they are considered an administrative body, in accordance with article 5.1 of Law 40/2015, of October 1 Public Sector Legal Regime, the administrative units to which are assigned functions that have legal effects vis-à-vis third parties or whose performance is mandatory.

Taking into account the purpose of the LTC, it can be concluded that this obligation to make public the identity of those people who occupy positions that can be qualified as having special responsibility within the organization, includes not only the people who are part of the management bodies but also others such as area directors, service directors or similar, especially if they have the capacity to make decisions that may directly affect the rights of the users of the services provided by the entity or of the people there they work

In short, with respect to staff who hold managerial or special responsibility positions, in the terms indicated above, given that there is an active advertising obligation, nothing would prevent the communication of data to the applicant.

On the other hand, and for the rest of the jobs, article 9.1.e) of Law 19/2014 imposes the obligation to publish "The calls and results of the selective provision and professional promotion processes". In other words, when the selection process is carried out in order to be able to occupy a certain job, it is necessary to give publicity to the person who obtained it. This will allow the person to be identified and linked to a specific workplace.

Taking this into account, it is necessary to admit the possibility of identifying the people who occupy a certain job within the Public Administration.

In any case, and beyond the people who must already be identified in the transparency portal in accordance with 9.1.b) of the LTC, it would be necessary that prior to access, the procedure of hearing provided for in article 31.1 of the LTC.

This procedure would allow it to be known if there is a specific personal circumstance that justifies the limitation of the right of access. The identification data of these workers should not be provided when the access affects employees or officials who are in a situation that requires special protection, for example being a victim of gender violence, etc., which can be seen affected by the disclosure of information relating to the workplace they occupy.

It should be clarified that, beyond senior positions, management staff or temporary staff, where access would mean having information on the full remuneration received by each of these people, with regard to the rest of the staff, the possibility of linking the information on the name and surname of each of the people and the place of work with the information provided by the RLT on the position they occupy, would not allow to know the full remuneration received by each of these workers but only the established remuneration in the RLT.

## Conclusions

The transparency legislation would enable, for the purposes of article 11.2 a) the LOPD, and article 6.1.c) and e) RGPD, access to information on the workforce, the list of jobs and the relationship of temporary contracts and internships not linked to any workplace in the entity.

With regard to the full remuneration associated with each job, the right of access would prevail in the case of the positions of senior officials and managerial staff, as well as the staff who occupy positions of



trust or of special responsibility within the organization, including temporary staff and hired as advisors to all political groups established from January 3, 2011, while for the rest of the workers, individualized access no longer seems justified beyond the possibility of providing information on remuneration grouped by category or the remuneration associated with the different jobs.

With regard to the name and surname of the people who occupy the different jobs of the entity, including temporary staff and those hired as advisors to political groups, the protection of personal data would not prevent access to them whenever have carried out the hearing procedure provided for in the LTC and there is no reason that could justify the denial of access.

Barcelona, April 18, 2018