

Ref.: IAI 4/2018

Claim: 480/2017

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to a claim presented by the Works Council of a public entity for the denial of access to information in electronic and editable format about the workforce, the organizational structure, the list of jobs and the remuneration system of the workers of that body

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on claim 480/2017 against a public entity for the denial of access to information in electronic and editable format on the workforce, the organizational structure, the list of jobs and the remuneration system for the workers of that entity.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the Legal Advice I issue the following report.

Background

1. On October 17, 2017, the President of the Works Committee of the public entity submitted to this body a request for access to the following information:

1. The staff, the organizational structure, the relationship of jobs, and the remuneration regime that, in any case, includes the full gross remuneration - basic and complementary remuneration and types of salary supplement that give rise to different salaries - of each of the workplaces of the public entity including all managerial positions, as well as the staff and the list of temporary contracts not linked to any workplace, as of July 2, 2012, in the terms provided for in section d) of article 8.1 and section d) of article 9.1 of the LTAIPBG.

2. Access in electronic format to the first and last names of the people who hold each of the jobs of a public entity, including all managerial positions and the list of new hires and retirees, as merely identifying data in the terms of article 24.1 of the LTAIPBG.

2. On November 17, 2017, the public entity sent a letter to the applicant in which they indicate that they respond point by point to the demands made.

3. On November 27, 2017, the GAIP received the claim made by the representative of the Works Committee, considering that the information that had been given to him was incomplete given that:

- Despite the fact that the public entity states that the Committee already has the organization chart and the labor census, they do not have this information in an electronic and "workable" format and, on the other hand, the census refers to 297 workers out of 316 positions available to the workforce, according to the information provided.

- In relation to the remuneration table corresponding to 2017, there are staff who, in addition to the remuneration section assigned in the table, also receive a salary supplement. The committee does not know the number of workers who receive a salary supplement outside the remuneration table, the type of supplement and its amount.

4. The file contains the report required by the GAIP to the public entity in relation to this claim.

5. On January 11, 2018, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government (hereafter LTC), in relation to the claim presented.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must request a report from the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the affected persons, understood as any information referring to identified or identifiable persons (article 3 .a) of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), in particular, any numerical, alphabetical, graphic, photographic, acoustic or any other type of information relating to natural persons identified or identifiable without disproportionate efforts (arts. 5.1.f) and 5.1.o) of the LOPD Deployment Regulation (RLOPD), approved by Royal Decree 1720/2007, of December 21).

Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance (hereafter, LTC).

II

The issues relating to the transfer of data on the workforce, the list of jobs, and the remuneration of public employees has been the subject of analysis by this Authority previously in reports CNS 42/2016, IAI 9/2016, IAI 12/2017, IAI 36/2017, among others, which can be consulted on the APDCAT website. www.apdcat.cat.

Thus, the data of the employees of the public entity, which identify them or allow their identification, as well as those data which may refer to the workplace they occupy, but which can be associated with a specific worker and by both identify it, are personal data and are protected by the principles and guarantees of data protection regulations. 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.

Article 18 of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) establishes that "people have the right to access public information, to which it refers article 2.b, in an individual capacity or in the name and representation of any legally incorporated legal person" (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 that him they supply the other obliged subjects in accordance with the provisions of this law".

Law 19/2013, of December 9, on transparency, access to public information and good governance, (LT) is pronounced in similar terms.

However, in accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to information that contains personal data, it is necessary to assess whether or not the right to data protection of the affected persons justifies the limitation of the right of access to public information regulated in the LTC invoked by the applicant or, in other words, whether the Transparency Law would give legal cover to a communication or transfer of data such as that raised in the claim that is the subject of this report.

In relation to specially protected personal data, this is those that, in accordance with article 7 of the LOPD, reveal ideology, trade union affiliation, religion or beliefs, those that refer to racial origin, the health and sexual life, and also those relating to the commission of criminal or administrative offences, article 23 of the LTC, establishes the following:

"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life,

and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents through a written document that must accompany the request."

The LT with regard to specially protected data, provides in its article 15.1 that in the event that the information contained specially protected data about any of the affected persons, relating to ideology, trade union affiliation, religion and beliefs, confidentiality must be preserved, unless the express consent of the affected persons is provided, with the access request itself; likewise, with regard to specially protected data relating to racial origin, health, sex life or the commission of criminal or administrative offenses that do not entail a public warning of the offender, access could be authorized if the express consent of the affected person or a rule with the rank of law equals the access.

With regard to data that is not considered specially protected, the first point of article 24 of the LT provides for access to public information "if it is information directly related to the organization, the functioning or public activity of the Administration that contains merely identifying data, unless exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail."

With regard to the rest of the personal data, the eventual access to the requested personal information goes through a prior reasoned weighting between the different rights and interests in accordance with the provisions of article 24.2 LTC:

" 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 the disclosure and the rights of the affected persons. 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. (...)."

One of the weighting elements, as we have seen, is the purpose of the access. In relation to this element of weighting, it must be taken into account that the person requesting access is the president of the Works Council of the public entity, which legally holds the status of a representative and collegial body of all the workers of the company. Thus, with regard to personnel subject to labor law, the Workers' Statute, Royal Legislative Decree 5/2015, of October 30, (ET) recognizes a right of information to Personnel Delegates and Company Committees (art. 62 and 63 ET) for the fulfillment of its functions, in relation to which the Works Council has the right to be informed and consulted by the employer on the issues that may affect the workers, as well as on the situation of the company and the evolution of employment in the company (art. 64 ET). In the same sense and with regard to the representatives of civil servants, article 40.1 of the EBEP attributes to the Staff Boards and staff delegates, among other functions, those of receiving information on

the personnel policy, as well as on the data relating to the evolution of remuneration, verifiable evolution of employment in the corresponding field and performance improvement programs.

Consequently, it will be necessary to analyse, for each type of data requested, if the aforementioned regulations give the Works Committee a specific authorization for its access.

III

With regard to the claim relating to the staff and the organizational structure, these are documents that, in principle, must not contain personal data. The list of jobs also does not contain one, although in this case it can easily be linked to other documents (eg appointments), which can provide personal information indirectly.

In any case, it must be taken into consideration that the LTC, in regulating the active advertising regime, establishes in article 8.1.a) that the public administration, in application of the principle of transparency, must make public the information "relating to the workforce, the list of jobs and the remuneration regime" and specifies in article 9.1 that the information relating to the institutional organization and the organizational structure that must be made public by the administration must include "the list of official, labor and casual staff jobs, and the workforce and the list of temporary and temporary contracts not linked to any job in said list of jobs.

To the extent that this information must be public, and that citizens must also be able to have access to it when they request it, all the more reason that the works council must be able to have access. Therefore, there would be no impediment, from the point of view of data protection, in handing over the list of jobs, the workforce and also, if it were the case, "the list of temporary contracts and internships not linked to no workplace from the aforementioned list of workplaces".

It must be agreed that the information related to the relationship of jobs must be delivered regardless of whether, as the public entity has stated, formally it does not have to have a relationship of jobs for the labor personnel in terms of the civil service regulations, because it is information that must be in the company's possession, whatever the internal name given to this instrument.

IV

The name and surname of the people who hold each of the public entity's jobs are merely identifying personal data directly related to the organisation, operation or public activity of the body.

As we have indicated, article 24.1 of the LTC foresees that it is necessary to give access to identifying data related to the organization, operation or public activity of the body unless some special circumstance requires the protection of the interested people

With regard to the identification of the people who occupy the jobs of the required body, it is appropriate to differentiate the data of the people who occupy managerial positions or of special responsibility, from the rest of the workers.

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 being of special responsibility within the organization, includes not only the people who are part of management bodies but also others such as area directors, service directors or similar, especially if they have the capacity to take decisions that may directly affect the rights of the users of the services or the workers of these companies.

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 them from communicating to the Works Committee.

With regard to the rest of the body's workers, it is necessary to take into account the criterion supported by this Authority in its opinions according to which it is necessary to admit the possibility of identifying the people who occupy a certain job within the Public Administration, an interpretation that must be extended to public sector entities, such as the one that is the subject of the claim. In this sense it could be concluded that the right to data protection would not prevent access to the identification data of the workers as long as the hearing procedure provided for in article 31.1 of the LTC has been given and this procedure does not result in any reason that could justify the denial of access.

In this sense, it would be necessary to give the people affected the allegation procedure provided for in article 31.1 of the LTC, so that it can be known if there is a specific personal circumstance that justifies the limitation of the right of access. The identification data of these should not be provided when access affects employees or officials who are in a situation that requires special protection, for example being a victim of gender violence, etc., which may be affected by the disclosure of information related to the workplace they occupy.

The claim refers to the fact that the census information provided by the public entity affects 297 workers out of the 316 positions available to the workforce. If we take as a reference what is established in article 28 of Legislative Decree 1/1997, of October 31, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in matters of public function, "the staff is made up of the places provided for in the budgets, classified into groups of bodies and, within the groups, according to the scales of each body. It also includes casual and labor staff". As we have seen, the personnel template can be given to the Company committee and information can also be provided on the identification of the workers who make up this template, but it is possible that there is no coincidence between the number of workers in the template and the number of workers listed in the census since there may be positions in the workforce that are temporarily vacant.

v

With regard to the remuneration data of the staff in the service of the public entity relating to the basic and complementary remunerations and type of salary supplement for each of the jobs, it is necessary to take into account the provisions of the LTC in the matter retributive

Article 11.1 of Law 19/2014 establishes that they must be made public:

"b) The 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 have to be perceived when ceasing to exercise the position. (...)

e) The general information on the remuneration, compensation and per diems received by public employees, grouped according to the levels and bodies."

In accordance with the provisions regarding active advertising, the remuneration received by senior officials must be published on the portal individually for each job and for any type of remuneration, compensation or allowance. Regarding this, article 4.2.c) of the LTC provides that, for the purposes of what is established by law, they are considered senior positions in the service of the other public bodies referred to in article 3, "the holders or members of the governing bodies and the managerial positions of said bodies".

As for the rest of the workers, the information on remuneration must be published in an aggregated manner, that is to say, associated with the public administration jobs in question, grouped according to the levels and the bodies to which they belong (art. 11.1.e) LTC), without, in this sense, having to indicate the identity of the specific person who occupies a certain job.

To the extent that this information must be made public, no doubt can arise from the perspective of the right to data protection of the affected persons, the right of access of the Public Entity's Business Committee.

For the rest of the remuneration information that is directly related to the natural person who holds a job (such as three-year terms, the productivity supplement, bonuses, overtime pay, overtime or other supplements associated with the person), it is necessary to take into account the criterion supported by this Authority in previous reports on remuneration (IAI 9/2016 and IAI 36/2017, IAI 40/2017 among others) available on the Authority's website.

In this sense, it is agreed that the transparency legislation would enable, through the exercise of the right of access, the transfer of these remuneration data associated with the natural person, with respect to the holders of superior and managerial bodies because the article 11.1.b) LTC obliges to publish the remuneration (including allowances and per diems) received by these people.

This same criterion can be extended with respect to personnel who occupy positions of trust, of special responsibility within the organization, of free appointment, or that carry a high

remuneration level. Although in these cases the law does not provide for the publication of their remuneration on the Transparency Portal, with regard to requests for access to this information, it must be borne in mind that these are sites that, due to their singularity and also due to the level of remuneration they usually bring associated, the knowledge of their remuneration can be relevant for the control of the use of public resources. In these cases, it would be justified to provide individualized remuneration information about the positions, even identifying the people affected.

On the other hand, for the rest of the staff who do not meet these circumstances, 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 done by having the information on remuneration grouped by category or according to the different types of workplace. For this reason, it is considered that access to this information would not be justified in this case.

The Preamble of the LTC mentions that *"In a context of a democratic state and the rule of law, all public authorities have the legitimacy given to them by citizen participation in their configuration (directly or indirectly), which obliges to give an account to citizens, in accordance with the principle of responsibility, of their activity and the management of the public resources that have been made available to them."*

It is therefore part of the philosophy of transparency legislation that public administrations must be accountable to citizens, in relation, among other issues, to the management and destination that they give to public funds, such as those that they are allocated to the remuneration received by public sector workers.

As this Authority has previously agreed, among others in opinion CNS 42/2016, the right to obtain information on "the evolution of remuneration" (art. 64 ET) which is attributed to the Works Committee it is not equivalent to knowing the details of the remuneration of all the workers.

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 justified to give 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, given that these alternatives allow an evaluation of the use of public resources without unnecessarily sacrificing the right to data protection of the affected persons.

However, the mention of salary supplements "outside the remuneration table" to which the claim expressly refers deserves a special reference. As this Authority has previously highlighted, among others in Opinion CNS 36/2015, it cannot be ruled out that the Works Council or the workers' representative bodies, in the exercise of the functions they legitimately have attributed, must be able to have access to remuneration information associated with specific workers on certain remuneration supplements not provided for in the remuneration tables or in the applicable agreements, when this need is justified or there are indications of anomalous or irregular situations, especially if it is supplements no

provided for in the legal system and in the perception of which there may be a wide margin of discretion in their recognition.

However, in the case at hand it does not seem necessary to provide personal information. The claim made by the works committee against the response given by the public entity, refers exclusively to three specific issues at this point:

- "the number of workers who receive a salary supplement outside the table retributive"
- "what type of supplement is there -
"what amount"

To the extent that the information on these supplements, in the terms in which the request is formulated, does not require the inclusion of personal information, nothing would prevent, from the point of view of the protection of personal data, that this information is provided.

In relation to the claimant's request that the information be delivered to him in electronic format, it is necessary to take into account what is established in article 36 of the LTC and, article 22 LT in relation to article 15.5 of the LT which provides that the data protection regulations will apply to the subsequent processing of the data obtained through the exercise of the right of access, in such a way that any processing of the data obtained through the right of access, including any subsequent use or treatment that the claimant may make of this data is subject to the principles and guarantees provided for in the data protection regulations.

conclusion

The data protection regulations do not prevent the delivery of information on the workforce, the organizational structure and the list of jobs and the list of temporary and internship contracts not linked to any place in said list of jobs of the claimed entity.

With regard to the name and surname of the people who hold the different jobs of the public entity, the protection of personal data does not prevent access to them as long as the hearing procedure provided for in the LTC has been carried out and it does not result in any reason that could justify the denial of access.

With regard to the full remuneration associated with each job, the right of access would prevail in the case of positions of managerial personnel or personnel who occupy positions of trust or special responsibility within the organization, while for the for the rest of the workers, individualized access beyond the possibility of providing information on remuneration grouped by category or the remuneration associated with different jobs does not seem justified.

The data protection regulations do not prevent the provision of information on the number of people who receive a salary supplement outside the remuneration table, the type of salary supplement and its amount, without identifying the specific workers who receive them.

Barcelona, January 30, 2018