

Claim: 82/2018

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim for the denial of access to information on different processes for the provisional provision of jobs in a public company of the Generalitat de Catalunya

The Commission for Guaranteeing the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on claim 82/2018 presented by a union in relation to the denial of the 'access to information on different provisional job provision processes of a public company of the Generalitat de Catalunya, carried out from January 13, 2016 to the present.

After analyzing the request, which is accompanied by a copy of the administrative file processed before the GAIP, this Legal Counsel issues the following report:

Background

1. On May 29, 2017, the general secretary of a union asked the Administration of the Generalitat for access, preferably in electronic format, to the following information referring to the job offers published on the ATRI portal since 13 from January 2016 to the present:

- a) Motivation, on the part of the general secretaries or competent body, for which the provision of positions is made through an extraordinary system of provision.
- b) Adaptation of the profile of the selected to the characteristics of the positions, specifically:
 - Information on the fulfillment of the requirements to exercise the position by the person selected
 - Specification of whether or not objective scales have been applied that quantify the relative value of the various merits that the candidates could contribute and of other tests that they have been subjected
 - If so, the criteria and scales used in the various selection processes of staff
 - Evaluation of the merits and capabilities of all applicants for the offer, specifying the score for each of them, as well as for each of the tests, with the final total score.
- c) The appointment resolutions covering the positions offered.

2. On July 10, 2017, the competent Department of the Generalitat issued a resolution rejecting the access request submitted considering that obtaining the requested public information required a complex task of elaboration or re-elaboration, in accordance with article 29.1.b) of Law 19/2014, of December 29, on transparency, access to public information and good governance.

3. On August 10, 2017, the general secretary of the union lodged a complaint (no. 379/2017) with the GAIP for denial of access to the requested public information.

4. On October 4, 2017, the first session of the mediation procedure was held, regulated by article 42 of Law 19/2014, of December 29, on transparency, access to public information and good government, without an agreement being reached between the parties on access to the claimed information.

5. On October 10, 2017, the GAIP requested this Authority to issue the report provided for in Article 42.8 of Law 19/2014, of December 29, on transparency, access to information public and good governance, in relation to Claim 379/2017.

6. On October 27, 2017, the director of the APDCAT issued a report (IAI 38/2017) on Claim 379/2017, concluding that:

"The right to data protection does not prevent the person making the claim from providing the information relating to the identity and the fulfillment of the participation requirements by the people finally selected in the processes of provisional provision of jobs offered by the Administration of the Generalitat de Catalunya from 2016 to the present.

With regard to the information relating to the score obtained in relation to the assessed merits and/or the tests carried out, the right to data protection does not prevent access to it regarding the people finally selected. As for the rest of the candidates, access would not be justified, unless they were anonymized."

7. On November 28, 2017, the GAIP, through Resolution 388/2017, agreed:

"1. Partially estimate Complaint 379/2017 and arrange to reverse the processing of the request for access to public information that is the subject of the complaint at its inception, while ordering the (...) that, within a period of fifteen calendar days, the refer to the departments and bodies that have published and promoted the job offers in ATRI from January 13, 2016 to May 29, 2017, so that they give it the appropriate procedure and resolve each of them in relation to the part of information they have, in accordance with the procedure and within the deadline established in article 33 of the LTAIPBG and in accordance with the criteria established in FJ5 of this Resolution. (...)"

8. On January 12, 2018, the competent Department of the Generalitat, in compliance with Resolution 388/2017 of the GAIP, referred the request for public information to a public company of the Generalitat of Catalonia.

9. On February 14, 2018, the public company provides, in electronic form, the requested information, in accordance with the note issued by the Administration of the Generalitat on Resolution 388/2017 of the GAIP.

10. On March 15, 2018, the general secretary of the union lodged a complaint with the GAIP against the public company considering that the information provided was not complete.

11. On April 6, 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 governance, 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 issue a report to 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 persons affected, understood as any numerical, alphabetical, graphic, photographic, acoustic information or of any other type relating to physical 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 21 of December). 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.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

II

The complaint is filed against the denial of access to information consisting of data related to the calls published since January 13, 2016 on the ATRI portal for the provisional provision of different jobs in a public company of the Generalitat of Catalonia. Specifically, the requested information includes:

- a) The motivation for which the provision of places is made by an extraordinary system of provision. b) The suitability of the selected candidate's profile to the characteristics of the positions and, specifically:
 - Information on the fulfillment of the requirements to exercise the position by the person selected

- Specification of whether or not objective scales have been applied that quantify the relative value of the various merits (academic, professional, etc.) that the candidates could contribute and of other tests to which they have been subjected.
- If so, the criteria and scales used in the various selection processes of staff
- Evaluation of the merits and capabilities of all applicants for the offer, specifying the score for each of them as well as for each of the tests (interview, computer test, psychotechnical test, assessment of knowledge, experience, training, etc. .), with the final total score. c) The appointment resolutions covering the positions offered.

As has been made clear in the antecedents of this report, the person now claiming initially addressed his request for access to (...), to understand that it was the administrative body that had of said information. By denying him access, he lodged a complaint with the GAIP (Complaint No. 379/2017), in relation to which this Authority issued, as part of the complaint procedure, the report referred to in article 42.8 of Law 19/2014 (IAI Report 38/2017).

In said report, this Authority examined the repercussion that, for the right to privacy and the protection of personal data (article 18.4 EC) of the affected persons - those who have intervened in a procedure for the provision of jobs due to of their functions and those who have participated in them (selected candidate and non-selected candidates)-, could entail admitting the applicant's (general secretary of a trade union) access to the previously related public information.

Having carried out this analysis, in accordance with the provisions of articles 23 and 24 of Law 19/2014, the Authority concluded that:

"The right to data protection does not prevent the person making the claim from providing the information relating to the identity and the fulfillment of the participation requirements by the people finally selected in the processes of provisional provision of jobs offered by the Administration of the Generalitat de Catalunya from 2016 to the present.

With regard to the information relating to the score obtained in relation to the assessed merits and/or the tests carried out, the right to data protection does not prevent access to it regarding the people finally selected. As for the rest of the candidates, access would not be justified, unless they were anonymized."

In the aforementioned complaint procedure (Complaint no. 379/2017), it was made clear that (...) was not the competent body to deny the access request, so the GAIP agreed (Resolution 388/2017, of November 28) to withdraw the procedure at the beginning of the processing and required (...) to refer the request for access to the departments and bodies of the sector public of the Generalitat who, during the time interval indicated in the application, had published job offers in ATRI and, therefore, had the provision files, for the purpose of continuing with the processing of the application (articles 27.3 and 30 Law 19/2014).

Among these bodies of the public sector, there is the public company (...). It is stated in the file that this entity, in compliance with the aforementioned Resolution 388/2017 of the GAIP and following the note issued by (...) in this regard, would have provided the applicant with:

- a) An outline of the procedure and the phases of the selection process, which includes the elements that are taken into account in the candidate selection process and the scales applied.
- b) The appointment resolutions of the selected candidates for the jobs offered from January 13, 2016 to May 29, 2017. c) A table detailing the identity of the selected candidates with an indication of the score obtained in each of the phases of the selection process (curriculum assessment, total assessment of the psychotechnical test and the theoretical/practical test, and assessment of the interview) and of the overall score.

Despite this, the applicant alleges in his claim that the information provided by the public company is incomplete, given that they do not "deliver the criteria or scales foreseen and applied, the evaluation of merits and capacities, and scores finals (with the safeguarding of the identity of those not selected)".

He adds that "GAIP resolution 388/2017 justifies access and finds it convenient - for the function of evaluating the functioning of public administrations (...) - access to the "score obtained in relation to the merits provided for in the call, as well as, if applicable, that of each of the tests that have been carried out, the assessment of which has made certain candidates finally selected" as long as and when they are excluded "from access the personal data referring to the non-selected candidates". Eliminating this information makes it impossible to verify that the public administration is guaranteeing that the person selected is the most meritorious, capable and qualified possible, the true purpose of this request for public information."

In relation to the request for the criteria or scales foreseen and applied to the procurement procedures, please note that, in view of the content of the document relating to the outline of the procedure and the phases of the selection process, it seems that this information already would have been provided by the public company to the claimant. In any case, given that this is information that cannot be qualified as personal information (Article 3.a) of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD)), there would be no inconvenience, from the point of view of data protection, for it to be delivered to the person making the claim.

With regard to the information relating to the evaluation of merits and abilities, and final scores, make it clear that, if the request for access is made in relation to the candidates finally selected to occupy the jobs offered, this information would have already been provided to the person claiming, in view of the content of the table provided by the public company in this regard.

In the event that the request for access to this information is made in relation to non-selected candidates, this Authority reiterates the considerations made in the IAI 38/2017 report, to which we refer.

conclusion

In accordance with the considerations made in the IAI report 38/2017, which are given as reproduced, the right to data protection does not prevent giving the person claiming the information relating to the

score obtained in relation to the merits assessed and/or the tests carried out regarding the people finally selected in the provisional provision processes. As for the rest of the candidates, access would not be justified.

Barcelona, April 13, 2018

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