

Ref.: IAI 16/2018

Claim: 70/2018

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 the list of all agents of the urban guard of a town hall with the individualized calculation of hours of overtime and extras made during the year 2016

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 70/2018 submitted in relation to the denial of access to list of all urban police officers of a town hall with the individual calculation of overtime hours and overtime worked during 2016 presented by a union.

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 April 6, 2017, the president of a Trade Union Section of a town hall, requests from that town hall a list of all the agents of the Urban Guard, with the individual calculation of the hours of extension of working hours for the year 2016, as well as the individual calculation of overtime worked during the year 2016.
2. On September 14, 2017, (...) reiterates the request made on April 6, 2017 to the town hall, for not having obtained a response to it.
3. On February 27, 2018, the representative of the Union filed a claim with the GAIP in which he states that he has not received a response from the City Council, nor has he been given the requested information.
4. On April 19, the city council issued a report, at the request of the GAIP, in relation to claims 69/2018, 70/2018, 71/2018, 72/2018 and 73/2018 formulated by the union section. In relation to claim 70/2018, the City Council notes that the information requested by the trade union section is information that it receives, like any trade union section of the City Council, by being notified monthly of the resolution by which they approve payroll variations.
5. On May 11, 2018, the GAIP requests this Authority to issue a report in relation to Claim 70/2018, submitted.

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 Regulations for the deployment of the LOPD, (RLOPD), approved by R. 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.

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 data of the members of the urban guard available to the City Council, which identify them or allow their identification, are personal data and are protected by the principles and guarantees established by the LOPD, as the protection regulations data applicable at the time of the information request.

In accordance with 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) the LOPD enables the assignment of

personal data without the consent of the interested party when this is covered by a rule with the rank of Law.

Law 19/2014, of 29 December 2014, on transparency, access to information and good governance (LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1). The aforementioned 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 that supplied by the other subjects obliged in accordance with what establishes this law".

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

The information requested is "public information" subject to the access regime provided for in the transparency legislation. However, in accordance with article 20 and s. 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 the right to data protection of the affected persons would justify or not the limitation of the right of access to public information regulated in the LTC which the claimant invokes.

III

The object of the access is the individualized calculation of the hours of extension of the working day of the agents of the urban guard in 2016, as well as the individualized calculation of extra hours performed by these agents during the year 2016.

It does not appear that this information should contain particularly protected data, that is, data 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 (article 7 LOPD), but if this is the case, access should be limited, unless the express and written consent of the affected person is available should accompany the application as required by section 23 LTC.

Based on the premise that the information does not contain specially protected data, the provisions of Article 24.2 LTC must be taken into account:

"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 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. (...)."

Any access that may be granted to the person requesting it necessarily requires a prior and reasoned weighing of the different rights and interests at stake. In this sense, it is important to take into account the specific purpose of the access. In fact, although in accordance with article 18.2 LTC, the exercise of the right of access is not subject to motivation, the purpose of the access or the reasons for which it is interesting to know the information, is one of the criteria of weighting provided for in article 24.2 LTC mentioned.

Before analyzing the various cases, it must be taken into consideration that the person who submits the request for access does so on behalf of a trade union section of the town hall in his capacity as president. In accordance with Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee (TRLEBEP) (art. 39), and Workers' Statute, Royal Legislative Decree 5/2015, of October 30 (ET) (art.63), are the boards or staff delegates and the Company Committee, the specific bodies representing civil servants and workers public with an employment contract respectively and, as such, exercise the functions granted to them by article 40 TRLEBEP and 64 ET, among others, "receiving information, on the personnel policy, as well as on the data referring to the evolution of remuneration, likely evolution of employment in the corresponding field and performance improvement programs" (art. 40.1.a TRLEBEP) or "to be informed of all penalties imposed for very serious faults". Art.40.1.c TRLEBEP).

Bearing in mind that, in the case at hand, the information requested would not be part of the information that, in accordance with article 40 of TRLEBEP, must be communicated to the representatives of the civil servants, and by someone other than the subject claimant, despite being a representative of a trade union section does not prove that he is considered a representative of workers in the terms of article 39 of the TRLEBEP, it is necessary to analyze this request for access in accordance with the planned regime in the transparency legislation.

In the case at hand, the applicant specifies the specific reasons for which this information is required, which are "the defense of the general interest and for the good functioning of the Public Administration and specifically the defense of the principles of legality , objectivity and impartiality that must guide the activity of the public administration".

The purpose of the Transparency Law is, as can be seen from article 1.2 LTC, to establish a system of relationship between people and the public administration and other obliged subjects, based on the knowledge of public activity, the incentive of citizen participation, improving the quality of public information and administrative management and guaranteeing the retention of accounts and responsibility in public management, coinciding in these cases with the purpose announced by the applicant in his request

In this context, if citizens must be able to have this ability to control and hold public administrations accountable, with more reason, if applicable, this ability must be recognized in the representative of a trade union section.

It should be taken into account that the information on overtime hours worked by a worker, as well as the hours of extension of the working day - to the extent that these can be perceived with the corresponding compensation as gratification, whether financial or on public holidays -, forms part of the complementary remunerations that are specifically linked not to the job, but to the individual who occupies it, and must correspond to the amounts set by each administration with the corresponding regulatory limitations.

In this case, as can be seen from the terms in which the access is formulated, what is requested is the remunerative information in terms of overtime and extended working hours associated with each specific worker limited to a specific time period (2016) . It should be noted that the specific amount received for this concept is not part of the RLT.

It should be taken into consideration that in the matter of active advertising on remuneration, article 11.1 of the LTC 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, the societies, the foundations and the 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 of the Law, the remuneration received by senior local 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.b) of Law 19/2014 provides that, for the purposes of what the law establishes, they are considered high-ranking, in the service of the local Administration, "the local representatives and the holders of the superior and managerial bodies, in accordance with what is established by the local regime legislation".

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 involve a high level of remuneration. Thus, in line with the criterion maintained by this Authority, 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 is necessary take into account that these are positions that, due to their uniqueness and also due to the level of remuneration they usually bring associated, the knowledge of their remuneration may 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.

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 , without, in this sense, having to indicate the identity of the specific person who occupies a certain job.

This would be the case for members of the Urban Guard who would be affected by the access, as can be seen from the information available on the transparency portal of a town hall on the catalog of jobs of the town hall staff. According to this document, within the workforce there would be 35 corporal positions and 358 local police officer positions (Subgroup C2 in both cases).

However, beyond what the LTC can provide for active advertising in retributive matters, it is necessary to assess whether through the exercise of the right of access (a right that complements the information that the citizen can obtain through transparency), it would be justified to provide the requested personal information in this specific case.

As has been pointed out, the Public Administrations must be accountable to the citizens, in relation, among other issues, to the management and destination that they give to public funds, such as those allocated to the remunerations that public sector workers perceive.

In this sense, it could be relevant for the purposes of evaluating the management carried out by the governing bodies of the corporation, having information on the cost that may have been for the local body, covering certain services - in this case in the 'area of public security-', with the performance of overtime by local police personnel, either through payment or compensation with rest hours. However, if this is the objective pursued, it would be sufficient to have information on the overall number of overtime hours generated during the 2016 financial year by the staff of the police force, without the need to go into the details of the hours worked by each of the members that make it up.

However, it cannot be overlooked that an individualized report of hours worked by each worker can be relevant if what you want to check is the degree of compliance with the rules or agreements established in this regard, and to detect any irregular actions that have been able to produce when assigning overtime to certain workers or others. Indeed, the number of overtime hours assigned to each worker, the date of completion, the reason, and the compensation and/or payment system, would allow checking whether the assignment of these hours has been made respecting the established criteria, such as the maximum number of overtime hours to be worked by each worker, the circumstances of exceptionality or necessity that justify them or if the remuneration or compensation system with rest hours has been used. All this corresponds to information directly related to the management of human resources by the corporation with a clear repercussion in the cost of the service.

Even so, for transparency purposes what the transparency legislation pursues is to be able to evaluate the management carried out by the responsible body of the corporation as well as any arbitrary actions produced. And this assessment can be done without sacrificing the privacy of the affected workers.

It must be taken into account that the disclosure of information on 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 'financial institutions, social etc. While it is true that in this case the remuneration information would only refer to one of the salary supplements (overtime), the truth is that information can easily be obtained

on the base salary, and specific supplements and destination of the jobs held by public employees, via publication of the RLT and the corresponding Budget Law.

It is worth remembering that according to article 4 of the LPOD, "personal data can only be collected to be processed, as well as subjected to this processing, when they are adequate, relevant and not excessive in relation to the scope and the specific, explicit and legitimate purposes for which they have been obtained."

In this case, the purpose of transparency can also be achieved by providing the information in a dissociated manner, that is, in a way that does not allow the worker to be identified either directly or indirectly. For this purpose, the report of the individualized calculation of hours of extended working hours as well as that of overtime hours could be delivered with a simple code or number that cannot be linked to a specific worker.

conclusion

The data protection regulations would not prevent the person requesting access from being notified of the individual calculation of overtime hours as well as overtime worked by members of the Urban Guard during the requested period of time, as long as this information is provided in a dissociated manner, without the direct or indirect identification of the affected workers being possible.

Barcelona, May 28, 2018