

Ref. : IAI 35/2018

Claim: 191/2018

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 presented by a trade union organization against a City Council for the denial of access to information on the training actions of its staff.

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 the claim presented by a trade union organization against a City Council for the denial of access to the information on the information on the training actions of its staff.

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

Background

1. On November 3, 2015, the trade union section of a City Council requests from this City Council, "the list of scheduled training activities (other than AFEDAP) during the years 2014 and 2015, in which specify by area, the name of the colleagues, and the corresponding cost, as well as the criteria for the selection of the people who do or will do these activities."
2. On October 4, 2016, this organization presented, through another representative, separate written requests for the same information, this time referring to the years between 2013 and 2016.
3. On July 18, 2017, the same organization presents a new letter in which it requests, in relation to the training actions of the years 2015, 2016 and 2017, information on: "The personnel enrolled in each and every one of the training actions (with with the exception of those of the AFEDAP) made or underway this year, with specification of the planned budget or final cost (as appropriate) as well as the criteria evaluated in the allocation corresponding to the places."

The three requests appeal to the need to obtain information for the development of trade union tasks, relying on transparency legislation.

4. On October 24, 2017, the organization presents a final letter in which it is stated that certain types of training programs do not comply, in its opinion, with the principles of public administration (equality, merits and advertising), alleging a lack of information or knowledge of existing training programs on the part of working people, even resulting in discrimination. It is added that this situation affects the future promotion of these people, given that the training is assessed in the selective processes within

the Administration, and it is requested that the principles of equality, merit and publicity required for all training are complied with.

2. On May 25, 2018, the trade union section filed a claim with the GAIP against this City Council, for the denial of access to the requested information.

In the letter of complaint, they request verbatim "the data relating to the training actions of the City Council (...), with specification of the planned, final budget and criteria evaluated in the allocation of the training actions."

Also, it is alleged that as trade union representatives they must have the right to the information requested in the various instances presented above, in order to encourage participation, the improvement of the quality of the information and the administrative management, and the guarantee of the retention of accounts and the responsibility that belongs to them.

4. On June 22, 2018, the City Council sent the GAIP a report on its position in relation to the claim presented, accompanied by various documentation contained in the file.

5. On July 20, 2018, a mediation session was held, which the GAIP declared to be closed due to the disagreement between the parties.

6. On July 31, 2018, the GAIP requests the person making the claim to specify whether the identification of the people who have attended the trainings remains the subject of the claim, and if so, to provide reasons the need to access this personal data.

Likewise, additional information is requested on the type of information that is the object of the claim and which type of personnel it is addressed to (basic training in the work environment, specialized training, postgraduates...).

7. On August 1, 2018, the union delegate of the City Council sent a letter to the GAIP, stating that they maintain the need to access personal data, citing the reasons set forth in the letter presented on 24 October 2017, and indicating the different lines of training about which they are requesting information.

8. On August 3, 2018, the GAIP requests this Authority to issue a report in relation to the claim submitted.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Authority of Data Protection, the APDCAT is the independent body whose purpose is to guarantee, in

the scope of the powers 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.

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.

Before analyzing the merits of the matter, it should be noted, however, that although the new RGPD has been in force since May 25, 2018 (article 99), in this case it governs the LOPD and its deployment regulation (RLOPD), given that this was the regulation in force at the time the access requests prior to the claim were made (November 3, 2015, October 4, 2017, and 24 October 2017). It should be borne in mind, however, that the conclusions of this report would not vary if the new European regulation were the standard of reference.

II

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 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 (hereafter LTC), establishes that "people have the right to access public information, referred to in article 2.b, individually or on behalf of representation of any legally constituted legal person" (section 1).

Article 2.b) LTC defines "public information" as "the information prepared by the Administration and that which it has in its possession 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".

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

The complaint is filed against the denial of access to data relating to the training actions of the City Council. This information is public information for the purposes of article 2.b) LTC and, therefore, remains subject to the access regime provided for in the transparency legislation. However, in accordance with article 20 and s. of Law 19/2014, 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 would justify the limitation of the right of access to public information regulated in the LTC that invokes the requesting person.

III

Taking into account both the letter of complaint and the access requests that precede it as well as the rest of the documentation in the file, the interested person seeks access to the data relating to the training actions of the City Council with specification of the planned and final budget, as well as the criteria evaluated in the allocation of courses, and also, by area, the names of the people registered.

The first part of the information (anticipated and final budget, and criteria evaluated in the assignment of courses), should not affect personal data, and therefore from the perspective of data protection regulations, no inconvenience should 'having to deliver it.

The second part of the information, that is, the detail, by area, of the people enrolled in each of the proposed training lines, does affect the personal data of the workers, and it is necessary to determine whether the transparency regulations would enable the transfer of these data.

At the outset, due to the type of information in question (professional or academic curricular information of the workers) it does not seem that it can refer to particularly protected data, that is, relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, on which access should be limited, in accordance with the provisions of article 23 LTC.

Starting, therefore, from the premise that this is not information deserving of special protection and in application of article 24.2 LTC it is necessary to make a reasoned weighting between the different rights and interests at stake:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in 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.

(...)"

The person who makes the claim before the GAIP does so in the name and representation of a Trade Union Section in the City Council. According to the City Council's report of June 18, 2018, sent to the GAIP, this person is part of the Civil Service Board as a union delegate. This question is relevant, given that they are the boards or staff delegates (art. 39 of the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Basic Statute Law of the 'public employee, hereinafter TRLEBEP), as well as the Company Committee (art. 63 of the Workers' Statute, Royal Legislative Decree 5/2015, of October 30), the specific bodies representing civil servants and public workers with employment contracts respectively, and as such, exercise the functions granted to them by the corresponding regulations (art. 40 TRLEBEP and 64 ET), among others, the function of monitoring compliance with current regulations.

In this case, information is requested on all the training lines provided with the exception of the so-called AFEDAP line, which corresponds, according to the document on "The 2017 training contained in the file, with line 1: "agreed training actions with the union representation of the employees within the framework of the Training Commission."

The reasons for which the information is requested are based on the exercise of functions as a trade union representative. It is alleged by the claimant that there is discrimination due to a lack of information or knowledge of existing training programs on the part of working people, contrary to the principles of equality, merit and publicity that must govern in training processes. It is added that this situation affects the future promotion of these people, given that the training is valued in the selective processes within the Administration.

Article 14 of TRLEBEP recognizes the right of civil servants to continuous training and the permanent updating of their professional knowledge and skills, preferably during working hours, and Article 16 of this same text recognizes civil servants the right to professional career, understood as "the ordered set of promotion opportunities and expectations of professional progress in accordance with the principles of equal merit and ability." With this objective, public administrations must promote the updating and improvement of the professional qualification of their officials.

Article 40.1.a) of the TRLEBEP attributes to personnel boards, among other functions, that of receiving information on personnel policy, as well as on data relating to the evolution of remuneration, the verifiable evolution of employment in the corresponding field and performance improvement programs.

Beyond these provisions, the TRLEBEP does not expressly provide that the workers' representatives must receive a detailed list of all the workers who have participated in any training activity promoted by the City Council.

However, it should be borne in mind that in matters of transparency in the organization and administrative structure, article 9.1. of Law 19/2014, obliges the administrations to publish "g) the lists that may eventually be created to access to the training and promotion processes."

In accordance with this precept, the City Council would be obliged to make public on the transparency portal the list of people registered to participate in the various proposed training courses. Therefore, it is the same law that prevails over the public interest in access to the identity of the people who participate in the aforementioned training processes over their right to privacy. In this sense, the expectations of privacy that workers may have regarding their participation in training programs are conditioned by the publicity of their identity in the interest of transparency.

Taking into account these forecasts, if any citizen could access this information, with more reason it should be able to be given to a member of the Personnel Board and trade union representative. The workers' representatives carry out a control function, among other issues, of the public funds that are allocated to training and, ultimately, contribute to ensuring the effectiveness of the workers' right to receive sufficient and adequate information about the training that the City Council offers them, and about the people who benefit from them, with full respect for the principles of equality, merit and capacity, without any discriminatory situation occurring. In fact, according to the City Council's report sent to the GAIP, this would have already facilitated the list of people who would have participated in one of the training lines, corresponding to the Master's in Advanced Public Management, adding as reasons for justifying the lack of delivery of the rest of the information lack of technological resources.

IV

Finally, it is necessary to emphasize the importance of transferring the request to the affected persons, as provided for in articles 31.1 and 42 of the LTC, either by the City Council, during the processing of the request access, either by the GAIP during the claim procedure, so that it can be known if there is a specific personal circumstance that justifies the limitation of the right of access. For these purposes, the GAIP can use the data contained in the file to contact the affected persons or request the City Council to provide them with the data that can be used to contact them in contact

conclusion

The regulations for the protection of personal data do not prevent access by a trade union delegate and member of the Civil Service Board to the information related to the training lines requested, specifying the planned and final budget and the criteria evaluated in the assignment of the courses, as well as the detail, by area, of the names of the people who have taken or will take the courses.

Barcelona, September 6, 2018

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