

Ref.: IAI 37/2018

Claims: 283/2018 and 286/2018

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the denial of access and delivery of a copy of the organizational chart of the staff of a City Council, of the administrative files of approval and modification of the list of jobs and of the Corporation's workforce.

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 claims 283/2018 and 286/2018 presented by a citizen against a City Council for the lack of response to the request for a copy of the organization chart of the City Council's staff, of the administrative files for approval and modification of the list of jobs, of the Corporation's staff and of the appointment files of the staff listed in the 2018 organizational chart.

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 this Legal Advice I issue the following report.

Background

1. On May 28, 2018, the citizen, an active career official of the City Council, submitted two requests for access to public information to the City Council.

In the first request (6689), he requests a complete copy of the administrative records of the changes to the list of jobs approved on October 30, 2013 and January 30, 2014.

In the second application (6703) request an electronic copy of:

- The 2018 City Council staff organization chart.
- The staff approval files for the years 2016, 2017 and 2018 and, where appropriate, the its modifications.
- The records of approval of workplace relations, for the years 2013, 2014, 2016, 2017 and 2018 and, where appropriate, their modifications.
- The files relating to appointments, designations, attributions of functions or any other formula used by the staff included in the 2018 organizational chart

In this request, he also requests that he be considered as interested in the aforementioned administrative files as well as those that may be adopted later in relation to them, and that by virtue of this he be notified of the agreements and resolutions that can be dictated.

2. On July 27, 2018, the GAIP received two claims (283/2018 and 286/2018) made by the claimant for which he reiterates the requests for access to information, due to a lack of response from the City Council.
3. On August 3, 2018, the GAIP requested a report from the City Council in relation to this claim.
4. On September 4, 2018, the City Council delivered to the claimant a copy of the report made by the Council, dated August 27, 2018, in which it is considered that the requests made are not framed within the right of access.
5. On September 7, 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 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.

It is therefore also outside the scope of this report the request of the person claiming to be considered as an interested party in the aforementioned administrative files, as well as in those that may be adopted later, and that by virtue of this, the agreements and resolutions that may be issued are notified.

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).

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

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) in article 18 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). Article 2.b) of the LTC 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 obliged subjects in accordance with the provisions of this law". In similar terms, Law 19/2013, of December 9, on transparency, access to public information and good governance, (hereinafter, LT) is pronounced.

Thus, the information contained in the completed files to which the claims refer is "public information" for the purposes of the transparency legislation and remains subject to the access regime provided for in this regulation.

However, the right of access to public information may be denied or restricted for the reasons expressly established in the laws (Article 20 et seq. of the LTC). 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 which the claimant invokes.

In the case at hand, different documentation is requested which, although directly related, will be analyzed separately. In any case, it seems clear that the access requests that are analyzed do not involve access to specially protected data referred to in article 23 of the LT, given that, in principle, only deals with identifying data.

The claimant requests access to the 2018 City Council staff organization chart. The organization chart is the graphic representation of the organizational structure of the Corporation, therefore, it is a document that, in principle, must not contain personal data.

It also requests access to the template (understood as a grouping that includes the jobs in each category). It is a document that, in principle, must also not contain personal data.

Therefore, there would be no impediment, from a data protection point of view, in providing information on the 2018 City Council staff organization chart and the workforce.

In any case, it must be taken into consideration that the LTC, in regulating the regime of active advertising, establishes that the public administration, in application of the principle of transparency, must make public the information relating to "the internal organizational structure of the Administration" (art. 9.1.b) and the information "relating to the template" (art. 9.1 d). To the extent that this information must be public, citizens must also be able to access it when they request it.

III

With regard to the request for access to the complete administrative records of approval and modification of workplace relations, it must be taken into account that the RLT is the technical instrument through which the arrangement of all workplaces in a certain organization. Specifically, article 74 of the Basic Statute of the public employee, approved by Royal Legislative Decree 5/2015, of October 30 (EBEP), refers to the RLT in the following terms: "The administrations public bodies must structure their organization through workplace relationships or other similar organizational instruments that include, at least, the name of the positions, the professional classification groups, the bodies or scales, if applicable, to which they are attached, provision systems and supplementary remuneration. These instruments are public." Therefore, initially the administrative files requested by the claimant do not contain personal data.

As in the previous cases, there would be no impediment, from the point of view of the regulations on the protection of personal data, to be able to deliver this information. Not only because in principle this information would not contain personal data but also because the LTC expressly provides for its publication (art. 9.1.d)).

However, in the case at hand, it is not only the RLT or, where appropriate, its modifications that is requested, but the record of its approval. Article 70 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC), defines that administrative file must be understood as: "the ordered set of documents and actions that serve as antecedent and basis for the administrative resolution, as well as the proceedings aimed at executing it". It expressly indicates that "Information of an auxiliary or supporting nature, such as that contained in applications, files and computer databases, notes, drafts, opinions, summaries, communications and internal reports, is not part of the administrative file or between administrative bodies or entities, as well as value judgments issued by public administrations, unless they are reports, mandatory and optional, requested before the administrative resolution that puts an end to the procedure".

Although in principle the RLT must not contain personal data, the approval file may contain personal data of the people who have intervened in its approval or even of third parties (e.g. people who have participated in a public information procedure).

As for the former, in any case they will merely identify the people who have intervened due to their position in the processing of the procedure. Regarding this, article 24 of the LTC provides that "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 data, unless exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail."

Therefore, in the absence of any special circumstance resulting from the hearing procedure for the interested persons that justifies the removal of this data from the information provided, there would be no impediment, from the point of view of data protection, in giving the claimant a copy of the administrative files for the approval and modification of the RLT of the Corporation containing information about the people who have intervened in the procedure.

A different issue would be the identification of people who could have participated in the procedure by other means (eg in a public information procedure). In this case, the need for this information for transparency purposes is not proven, no

the sacrifice of the right to data protection of the people who had participated in this procedure would be justified.

IV

With regard to the request for access to files relating to appointments, designations, attributions of functions or any other formula used by the staff included in the 2018 organizational chart.

At the outset, article 9.1.b) of the LTC imposes the obligation of active publicity of "the internal organizational structure of the Administration and of the bodies and entities referred to in letter a, with the identification of responsible for the various bodies and their professional profile or trajectory"

Therefore, with respect to personnel who hold managerial or special responsibility positions, in the terms indicated above, given that there is an active advertising obligation, nothing would prevent their communication.

With regard to the rest of the Corporation's workers, it should be borne in mind that, as we have indicated, article 24.1 of the LTC provides that it is necessary to give access to identifying data related to the organization, operation or public activity of the organization unless some special circumstance requires the protection of the persons concerned. This, together with the publication of appointments and job provision resolutions that derive not only from the civil service regulations, but also from the transparency regulations (art. 9.1.e) LTC) means that must be able to access the identity of the people who have been appointed to join an official body or to occupy a position in the Public Administration. This Authority has maintained this in previous reports according to which it is necessary to admit the possibility of identifying the people who occupy a certain job within the Public Administration (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).

Now, in the case at hand, access is requested not only to the appointment but to the complete file. In this case, it must be taken into account that these records do not only contain the minimum identifying information (name and surname and location accessed) but may contain high identifying data (address, telephone, email electronic, ID number, SS number, etc.), data relating to training, professional experience, data on the tests in which you have participated or even special categories of data (disabilities, psychotechnical tests, etc.). And this is not only about the appointed person, but about all the people who have participated in the selection process.

In principle, the applicant does not prove that he has the status of a person interested in any of these files. If so, his right of defense could justify access to the information in order to make use of the instruments offered by the legal system to request the revision of the acts. Now, not having the status of interested party, and lacking more concreteness in the access request, access to all this information for the purpose of transparency would not be justified.

V

In any case, 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 access request, or by the GAIP during the complaint 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

It is also worth remembering that, in accordance with the provisions of article 35.2 of Law 19/2014, "The right of access cannot be acquired by administrative silence if any of the limits established by this or other laws to have access to public information."

Taking into account that part of the information subject to a claim contains personal data and that, with respect to this part, there is a legal limitation that must be dealt with by applying the criteria provided for in articles 23 and 24 of Law 19/2014, and which could mean a denial of access to the requested information, the right to access the claimed information that contains personal data cannot be understood as having been acquired by administrative silence.

conclusion

Data protection regulations do not prevent the provision of information on the organization chart of the Corporation's employees in 2018, the workforce and the list of jobs. A copy of the RLT amendment files can also be provided, although in this case it would be necessary to exclude the data that allow the identification of third parties other than those who have intervened in its approval by reason of their position.

With regard to the appointment files of the people who occupy the different positions of the City Council, the protection of personal data does not prevent access to them.

In any case, before giving access to personal data, you must have completed the hearing procedure provided for in the LTC and that there is no reason that could justify the denial of access.

Barcelona, 4 October 2018