

IAI 53/2018

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 about the salaries of public employees of a City Council

The Commission for Guaranteeing the Right of Access to Public Information (GAIP) asks the Authority Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the denial of access to information on the salaries of public employees of the City Council.

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 August 3, 2018, a citizen wrote to the City Council in which he asked questions about whether there had been an increase in the remuneration of the Municipal Comptroller, the employment relationship of the Comptroller with the town hall, if other municipal workers had also experienced an economic increase in their remuneration, and on the incorporation of a new manager.

2. On October 19, 2018, the City Council responded to the applicant indicating the employment relationship of the Municipal Comptroller with the city council and information on the incorporation of a new manager. With regard to the information related to remuneration, both from the Municipal Comptroller, as with the rest of the staff, this information is denied basing the denial on the existence of personal data.

3. On October 23, 2018, a citizen presented a claim against the City Council to the GAIP, in which he requested "data on public workers' salaries to be able to write a news story".

4. On October 30, 2018, the GAIP transfers the claim to the City Council and requests the completed file and report on it.

5. On December 4, 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 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 under the terms of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data (hereafter, RGPD). Therefore, any other limit or aspect that does not affect the personal data contained in the requested information is outside the scope of this report, as would be the case of the limit established in article 21.1.b) of the LTC, relating to the investigation or sanction of criminal, administrative or disciplinary violations, the application of which could lead to the claimant's right of access being denied or restricted for the purposes of protecting the investigation

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

According to the information sent by the GAIP, the claimant asked the City Council a series of questions to find out if there had been an increase in the salary of the Comptroller and the other municipal workers, the employment situation of the auditor and, the incorporation of a new manager with the aim of writing a news item in a local press. As a result of considering the answer given by the City Council unsatisfactory, the same person presents a claim in which he requests access to data on the salaries of public employees of the City Council, without making a distinction between the type of worker or his category within of the organization

It should be taken into consideration that the issues relating to the transfer of data on the remuneration of public employees has been the subject of analysis by this Authority previously in the reports IAI 9/2016, IAI 12/2017, IAI 36/2017, IAI 4 /2018, IAI 29/2018 and IAI 43/2018, among others, which can be consulted on the APDCAT website. www.apdcat.cat. _____

III

Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), defines personal data as " any information about an identified or identifiable natural person (the identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person; "

The data available to the City Council, which identify and refer directly to workers, as well as other data that may refer more specifically to the workplace they occupy, but which are associated or linked to a specific worker, and that therefore identify you, are personal data and are protected by the principles and guarantees established by the RGPD and by Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD).

The communication of personal data is data processing in accordance with the RGPD which defines it as "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection , the registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, or interconnection, limitation, deletion or destruction".

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides that the treatment will be lawful if "it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in Article 6.1 c) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment. In this regard, article 8.1 of the LOPDGDD establishes:

"1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when this is provided for by a law of the European Union or a rule with the rank of law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as

consequence of the fulfillment of the legal obligation. Said rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679.”

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

Specifically, article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity legally constituted" (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 which are supplied by the other obliged subjects in accordance with the provisions of this law". Therefore, the information requested is "public information" subject to the access regime provided for in the transparency legislation.

The requested information relating to the remuneration of City Council employees 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.

IV

The right of access to public information can 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 .

In the case we are dealing with, the requested data are not considered to be specially protected, therefore it is necessary to take into account what is established in article 24 of the LT which provides:

"1. 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 it must the protection of personal data or other constitutionally protected rights prevail.

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 disclosure and 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.”

As it is also not merely identifying data directly related to the organization, operation or public activity of the Administration, it is necessary to make a reasoned weighting between the public interest in the disclosure of the information and the rights of the people affected.

Although the LTC does not require that requests for access to information be motivated, the purpose that pursues the access, is configured as one of the weighting elements to be taken into account, in accordance with the article 24.2 b) LTC. In the case we are dealing with, the claimant states that the information is necessary for the production of a news item in a local media outlet.

In general and from the perspective of the right to the protection of personal data of the persons affected, it must be pointed out, as this Authority has highlighted in previous reports, that the information on the remuneration of a position of work provides information on the economic and labor profile that may affect the person who occupies it, both in the professional and in the social and economic sphere, and this is directly, facilitating the identification of the person who occupies the specific place, or indirectly, when it comes to places that can be related, by other means, without disproportionate effort, to the people who occupy them.

At this point, it is worth remembering the provisions regarding active advertising that, with regard to remuneration, are established by article 11.1 of the LTC.

Specifically, article 11.1.b) of the LTC establishes that "remuneration, compensation and per diems, the activities and assets of members of the Government, of senior positions in the Public Administration and of the managerial staff of public bodies, societies, foundations and consortia, and the compensation they must receive when they cease to hold office."

As for the rest of the workers, article 11.1.e) of the LTC obliges only to publish "general information on the remunerations, compensations and per diems received by public employees, grouped according to the levels and bodies".

As we have seen, according to article 11.1.b) of the LTC, the remunerations received by senior officials of the Public Administration must be published on the portal individually for each job and for any type of remuneration, compensation or diet. Regarding this, article 4.2.b) of the LTC provides that, for the purposes of what is established by law, they are considered to be high-ranking officials, in the service of the local administration, "local representatives and the holders of superior bodies and managers, in accordance with what is established by the local regime legislation".

These transparency obligations can be extended with respect to requests for access to information that affect personnel who occupy positions of trust, of special responsibility within the organization, of free appointment, or that involve a high level retributive. 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 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.

Apart from this, as far as we have been able to verify, the City Council makes public, in the section relating to the RLT of its transparency portal, the remunerations of all the jobs in the municipality for the 2018 financial year that they must appear in the list of jobs (RLT). Therefore, this would be data that has already been made public by the city council itself.

v

However, in the case we are dealing with, the remuneration of the place of intervention of the City Council is not requested, but the increase in remuneration that may have been experienced by this and other places in the City Council. The request made by the person making the claim to the City Council asked to know if the municipal comptroller had seen her economic remuneration increased and if there were other municipal workers who had also had an increase in their remuneration.

With regard to the determination and increase of the remuneration of municipal public employees, it is necessary to take into consideration what is established by its regulatory regulations. Thus article 21 of the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee, establishes with regard to the determination of the amounts of basic remuneration and remuneration increases that:

"1. The amounts of the basic remuneration and the increase in the global amounts of the complementary remuneration of the officials, as well as the increase in the wage bill of the labor personnel, must be reflected for each budgetary exercise in the corresponding budget law.

2. Retributive increases may not be agreed that globally involve an increase in the salary mass higher than the limits set annually in the General Budget Law of the State for personnel."

With regard to the fixed and periodic complementary remuneration of municipal officials, article 52.1.j) of Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal and Local Regime Law of Catalonia establishes that it corresponds to the Plenum of the Corporation:

"j) Approve the staff template and the list of jobs, set the amount of the fixed and periodic complementary remuneration of civil servants and the number and regime of temporary staff, all this in the terms established by the legislation on civil service local."

Likewise, article 93 of Law 7/1985, of April 2, regulating the bases of the local regime, establishes, with respect to the remuneration of local officials:

"1. The basic remuneration of local officials will have the same structure e identical amount to those established with a general character for the entire public function.

2. Complementary remuneration will also comply with the structure and objective assessment criteria of those of the rest of the public servants. Your overall amount will be fixed

by the Plenary of the Corporation within the maximum and minimum limits that are indicated by the State.

3. The Local Corporations will reflect annually in their budgets the amount of the remuneration of their officials in the terms provided for in the basic legislation on public service.

Royal Decree 861/1986, of 25 April, also applies to local civil servants, which establishes the remuneration regime for Local Government civil servants, which regulates the modification procedure in article 4 of the specific supplements, according to which:

"2. The establishment or modification of the specific supplement will require, with prior character, that the Corporation carry out an assessment of the job taking into account the circumstances expressed in number 1 of this article.

3. Once the assessment has been made, the Plenary of the Corporation, when approving the list of jobs, will determine those to which a specific complement corresponds, indicating their respective amount."

Consequently, any increase in remuneration as a result of the modification of the specific supplement will require, in advance, that the Corporation carry out an assessment of the workplace and subsequently that the Plenary of the Corporation approves or modifies the list of workplaces (RLT).

The RLT is the technical instrument through which the organization of all workplaces in a certain organization is carried out, regardless of the person who occupies the workplace, and must include, at least, the payment of the specific supplement and the destination supplement associated with each job (article 29 DL 1/1997 and article 169 of Decree 214/1990, of July 30, which approves the personnel regulations in the service of local entities), among other information.

The list of jobs, which must be modified in the event of a salary increase, must be subject to active publication in accordance with article 9.1.d) of the LTC which establishes that they must be made public the list of jobs for official, labor and casual staff. The publication of the RLT is also provided for in other rules with legal status, mainly the EBEP.

On the other hand, it must be taken into consideration that article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia, obliges entities to "publish on their electronic site the proceedings of the plenary sessions."

In short, any variation in the remuneration conditions of public employees must be subject to publication through the instrument of modification, either the State Budget Law (with regard to basic remuneration and the limit of increase in global remunerations), the approval provisions of the municipal budgets, the resolutions of the Plenary of the Corporation or the corresponding modification of the RLT.

In this sense, from the perspective of data protection regulations, it could be understood that since this is information that is the subject of active advertising, it is possible to

effective the right of access to that information related to the salary increases that must be included in the list of jobs (RLT) of the council, as well as those others that could be inferred from the budget laws if the relative provisions are related to the remunerations contemplated there with the content of the RLT. This information would be associated with each position or workplace and not with a specific person.

It is also worth noting that providing information about a salary increase does not necessarily involve making third parties aware of data that would allow them to perform an economic profile of the person.

In short, it is considered that the data protection regulations would not prevent responding to the person claiming to inform them about the salary increases of the municipal comptroller, or, in the event that they existed, of other positions or jobs in the council

Conclusions

The right to data protection does not prevent the person making the claim from being given information about possible pay increases that may have been made at the workplace following the intervention of the City Council, and, as the case may be, to other council workplaces.

Barcelona, December 21, 2018