

CNS 14/2019

Legal report in relation to the query made by a Trade Union Association about whether a list of overtime hours worked by police officers can be displayed on the notice board of the police station.

A request for an opinion is presented to the Catalan Data Protection Authority, from the secretary of a Trade Union Association and of the Delegate of the Personnel Board of a town hall, on whether the exhibition on the notice board of the Police Station of a list with the overtime hours worked by the staff during the current year, would conform to the data protection regulations.

In particular, it is being asked whether a list could be published on the notice board of the Police Station, to which, according to him, only the officers and staff who work there have access, a list that would include in one column the TIP or police officer number and in a second column the number of hours worked until the listing date.

Having analyzed the query, which is accompanied by photographs of the notice board and an example of the proposed model, and in accordance with the report of the Legal Counsel I issue the following opi

I

(...)

II

First of all, it should be borne in mind that in accordance with article 4.1) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), means personal data: "all information about an identified or identifiable natural person ("the interested party"); Any person whose 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".

So, all those data of public employees, in this case, members of the local police available to the City Council, that identify them and refer directly to the worker (such as first and last name) or allow their identification (such as, in this case, the TIP), as well as those data that may refer more specifically to the workplace they occupy, but that are associated or linked to a specific worker and therefore identify him, are data of a personal nature.

Any processing of personal data, understood 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 collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, utilization, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (4.2 RGD), must be subject to the principles and guarantees of the RGD.

Among these principles that must govern any treatment of personal data provided for in the RGD, the principle of legality (Article 5.1.a) RGD) requires that personal data be treated in a lawful, fair and transparent manner in relation to the interested. When one or more of the conditions provided for in article 6.1 of the RGD are met, it may be considered that the treatment is lawful. Specifically, section c) provides that the treatment will be lawful if "it is necessary to fulfill a legal obligation applicable to the person responsible for the treatment".

Article 6.3 of the RGD, establishes that the basis of the treatment indicated in letters c) and e), must be established by the law of the Union, or the law of the member states to which the person in charge of the treatment is subject. The referral to the legitimate basis established in accordance with the internal law of the member states referred to in this article requires, in accordance with article 8 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereafter LOPDGDD), that the norm has the status of law.

Therefore, in accordance with this regulation, in order for the City Council to be able to publish certain personal data of local police officers, it will be necessary for a rule with the rank of law to enable this treatment (art.6.1.c) RGD).

III

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

The LTC defines "transparency" as the proactive action of the Administration to make known the information relating to its areas of action and its obligations, on a permanent and updated basis, in a way that is more understandable for the people and through the dissemination instruments that allow them broad and easy access to the data and facilitate their participation in public affairs (art.2.a) LTC).

Also, 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 which they supply the other obliged subjects in accordance with the provisions of this law" (art.2.b) LTC).

The subjects included in article 3 of the LTC, among which, the entities that make up the local administration in Catalonia, must adopt the necessary measures to facilitate people's knowledge of public information.

In this context, it is necessary to analyze whether the transparency legislation entails a legal authorization for the publication of the requested information.

IV

The information that is required to be communicated through its publication on the notice board of the police station consists of the list of hours of extraordinary services performed by each of the members of the local police during the current fiscal year, identified through the your TIP number.

The information on overtime hours worked by a worker is part of the complementary remunerations that are essentially linked not to the workplace but to the natural person who occupies it, and must correspond to the amounts set by each administration with the limitations corresponding regulations. It should be noted that the specific amount received by each worker for this concept is not part of the RLT.

Active advertising in terms of remuneration is provided for in article 11.1 of the LTC. According to this precept, 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 is established in the law, they are considered high-ranking officials, in the service of the local administration, "the local representatives and the holders of superior and managerial bodies, in accordance with what is established by local regime legislation".

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.

Therefore, the information on the overtime hours worked by the staff who do not have the status of a senior position is not among this information that the Administration must publish.

V

Apart from the specific provisions mentioned, for the purposes of active publicity, it must be taken into account that public administrations, in accordance with article 8.1.m) of the LTC, must make public "any matter of public interest, and the information that is requested more frequently through the exercise of the right of access to public information", in application of the principle of transparency.

The information relating to the overtime hours worked by public employees could be relevant for the purposes of the accountability that corresponds to the Public Administrations and, therefore, could be considered information of public interest for the purposes of article 8.1 .m) of the LTC.

However, citizens' access to public information, whether as a result of publication on electronic headquarters and corporate websites, or as a result of exercising the right of access, remains subject to a series of limitations provided for in articles 20 and following of the LTC. In this sense, article 7.1 of the LTC establishes that:

"The limits applicable to transparency obligations are the same as those established by title III for the right of access to public information, especially those relating to the protection of personal data."

Specifically, and in relation to the protection of personal data, articles 23 and 24 of the LTC establish the criteria to be followed when the information to be transferred contains personal data.

The remuneration information of the workers is not considered to be specially protected data of those provided for in article 23 LTC. Therefore, for the determination of whether it is possible to publish information relating to the overtime hours worked by public employees, as a matter of public interest, it will be necessary to apply article 24.2 LTC, according to which:

"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.(...)."

In this weighting, it must be taken into consideration, as this Authority has previously highlighted, among others in Opinion CNS 9/2018 that can be consulted on the website www.apdcat.cat, that public administrations have to hold citizens accountable, in relation, among other issues, to the management and destination of public funds, such as those allocated to the remuneration received by public sector workers. 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 incurred 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 corresponding financial year, without the need to go into the details of hours worked by each of the members that integrate

However, we cannot ignore the fact that an individualized report of hours worked by each worker can be relevant if what we want to check is the degree of compliance with the rules or agreements established in this respect, and to detect eventual irregularities that have been able to produce when assigning overtime to certain workers or others. So the number of overtime hours assigned to each worker, would allow to check if

the allocation of these hours has been done respecting the established criteria, such as the maximum number of overtime hours to be worked by each worker.

It must be taken into account that the disclosure of information about 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, socially, 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 you can easily obtain information on the base salary, and specific and destination supplements of the jobs they occupy public employees, via publication of the RLT and the corresponding Budget Law.

For the purposes of transparency, what the regulatory regulations seek is to be able to evaluate the management carried out by the responsible bodies of the corporation as well as any arbitrary actions produced, but it must be taken into consideration that this evaluation can be done without the need to sacrifice the privacy of the affected workers .

So much so that in the recent modification of the Workers' Statute, introduced by article 10 of Royal Decree-law 8/2019, of March 8, on urgent social protection measures and the fight against job insecurity in the working day which adds a new section 9 to article 34, with the aim (as stated in the statement of reasons) to "guarantee compliance with the limits on working hours, to create a safety framework legal both for working people and for companies and to enable control by the Inspection of Trabajo y Seguridad Social", and which establishes:

"9. The company will guarantee the daily work register, which must include the specific start and end time of each worker's working day, without prejudice to the flexible hours established in this article.

Through collective bargaining or company agreement or, failing that, the employer's decision prior to consultation with the legal representatives of the workers in the company, this day record will be organized and documented.

The company will keep the records referred to in this provision for four years and they will remain at the disposal of the workers, their legal representatives and the Labor and Social Security Inspectorate."

The legislator has not foreseen that these records, which must be kept for a period of four years, are public, but rather that they are expected to be available when required by "working people" and legal representatives (for guarantee the exercise of their rights and substantiate possible claims), such as the Labor Inspection and Social Security (to provide greater effectiveness to their actions).

In short, it can be concluded that the information relating to the overall calculation of the overtime hours worked by the police officers could be information of public interest for purposes of transparency, and that, therefore, could be the subject of publication on the websites and portals of transparency of the subjects obliged by the transparency legislation, but that the dissemination of this information must be carried out without sacrificing the privacy of the p

The purpose of transparency pursued by the publication of information relating to the overtime of police officers, which ultimately is a purpose of controlling municipal action, can be achieved by applying anonymization mechanisms to the information subject to publication or of data automation.

In order to anonymize information, it must be agreed that in order for it to be considered sufficient, in terms of data protection legislation, it must be guaranteed that the information provided cannot be linked to a person physical identified or identifiable directly or indirectly. Therefore, from the point of view of data protection regulations, there would be no problem in providing aggregated information, or even disaggregated but without linking it to any code or element that allows identification.

There is also the possibility of providing information prior to pseudonymisation of the data, which in the terms of the RGPD can be understood as "the processing of personal data in such a way that they can no longer be attributed to an interested party without using additional information, as long as this information is recorded separately and is subject to technical and organizational measures aimed at ensuring that the personal data is not attributed to an identified or identifiable natural person" (art. 4.5 RGPD).

Pseudonymization is therefore a treatment of information that is subject to data protection regulations, and which consists, for example, of replacing a person's first and last name, or any other identifying data, with a code, so that if there is no additional information to establish a link, it is not possible to know who this code corresponds to.

In the case at hand, it is proposed to publish lists that would include in one column the TIP or police officer number and in another the number of hours worked up to the date of the list. It must be taken into account that the use of the TIP of the local police that is proposed in the consultation cannot be considered suitable to guarantee the privacy of the persons concerned, given that it is a numerical code that can easily be known, without disproportionate efforts, by the rest of the workers of the police departments and, in general, by any person through the publications that the sectoral regulations provide regarding the procedures for acquiring the status of civil servant for these workers, and that, for thus, it would allow the identification of the affected people.

To this end, the list of overtime hours worked by each worker could be published, replacing their TIP with a code or number that cannot be linked to a specific worker by third parties. In order for these codes to be effective from a data protection perspective, it is necessary to ensure that the identity of the worker is known only to the person who attributes the code, so that the worker is not identifiable to anyone else. This code could be maintained in the successive publications of the overtime hours worked, in order to be able to see the accumulation of overtime hours assigned to each of them, and guarantee this control purpose of the municipal activity.

In accordance with the considerations made in these legal foundations in relation to the query raised, the following are made,

Conclusions

Data protection regulations would not prevent publishing on the notice board of a Police Station, a list of overtime hours worked by members of the local police force during the requested time period, as long as this information is provided in a pseudonymised manner, without the direct or indirect identification of the affected workers by third parties being possible.

The use of the TIP by the local police cannot be considered appropriate given that it is a numerical code that can easily be known by the rest of the workers in the police departments.

Barcelona, March 15, 2019

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