

CNS 25/2019

**Opinion in relation to the query made by a city council on a request for the right of access and copy of the selection file by an individual in a selective process**

**A request for an opinion from a city council is submitted to the Catalan Data Protection Authority on a request for the right of access and copy of the selection file by an individual in a selective process.**

**The inquiry sets out as antecedents that a person who had participated in a city council selection process requested a copy of the selection process file, detailing the following content:**

- "1. Complete file with examination and merits of both training and experience of all people who have passed the practical test including their file.**
- 2. Way to calculate public and private experience and training.**
- 3. Work place record of all the people who passed the test.**
- 4. Examination and explanation of the correction thereof.**
- 5. Report denying the signed Postgraduate course report.**
- 6. Official review of a participant.**
- 7. Clarifications regarding the internal training of 2017 and 2018 that have not been evaluated and that are not recorded in any file."**

**That, subsequently, this same person presents an appeal in which he requests the following:**

**"That according to the provisions of article 13 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, it is of interest to issue a full copy of the administrative file, especially those resolutions of the organ of selection in which they approve the punctuation criteria and in which the granting of punctuation to each of the candidates is justified; as well as the certificates of use and attendance signed by the interested parties."**

**Specifically, in view of these antecedents, the city council consults the following:**

**"If a participant in a selective process has the right to access the file of said process and what are the terms of this right, specifically, if the right of access includes the right to copy, and what is the scope of this right, where appropriate (exams, CVs, documents certifying merits, etc.)."**

**If, in the event of having to respond to a request for the right of access and a copy of the selection file by a participant in a selective process, the administration must transfer the rest of the participants in the same in application of article 31 of the 19/2014, of December 29, on transparency, access to public information and good governance so that they express within a period of 10 days their conformity or not to the same,**

If, in the event of having to transfer to the rest of the participants, and they express disagreement in this respect, they must also proceed to give a copy of what is requested.

For all cases, what measures, if there is a right of access, must the administration take in order to guarantee legality in the matter of third-party data protection.”

Having analyzed the query, which is not accompanied by other documentation, in accordance with the report of the Legal Counsel I issue the following opinion:

I

(...)

II

Before analyzing the questions raised in the consultation, it is necessary to take into account the definition of personal data and treatment contained in the RGPD, and the conditions it establishes for a treatment to be considered lawful.

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), defines personal data as any information about an identified or identifiable natural person "the interested party"; "an identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier or one or more elements specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of this person" (article 4.1 RGPD). And it defines treatment 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, use, communication by transmission, dissemination or any other form of enabling access, access or interconnection, limitation, deletion or destruction" (article 4.2 RGPD).

Therefore, in view of these definitions, the communication of the information contained in a personnel selection file carried out by the administration to a citizen, either by facilitating the access and consultation of that person, either by the sending of the documentation that makes it up, is a processing of personal data that must be subject to the provisions of the RGPD.

With regard to the processing of personal data, article 5.1 of the RGPD includes the principle of legality according to which the processing of personal data must be lawful, loyal and transparent in relation to the interested party, and, because a treatment to be lawful must be based on one of the legal bases established in article 6.1 of the RGPD, among which, with regard to the treatments carried out by public administrations, it is necessary to highlight the one provided for in letter c), " the treatme

necessary for the fulfillment of a legal obligation applicable to the person in charge of the treatment", and that provided for in letter e), "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of conferred public powers to the person in charge of

It should be noted, however, that Article 9.1 of the RGPD prohibits the processing of personal data revealing ethnic or racial origin, political opinions, religious or philosophical convictions or trade union membership, and the processing of data genetic, biometric data intended to uniquely identify a natural person, data relating to health or data relating to the sex life or sexual orientation of a natural person, although this prohibition will not be effective when any of the circumstances of section 2 of this article.

In the case at hand, both the transparency legislation (Law 19/2013, of December 9, and Law 19/2014, of December 29, on transparency, access to public information and good governance), and the legislation of administrative procedure (Law 39/2015, of October 1, on the common administrative procedure of public administrations and Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia), regulate the cases of citizens' access to public information and determine the terms in which access can occur, and can constitute, as will be explained below, the legal basis for the processing of data subject to the consultation, in accordance with article 6.1. c) of the RGPD.

### III

The first of the questions raised in the consultation aims to determine whether "a participant in a selective process has the right to access the file of the said process and what are the terms of this right, specifically, if the right to access includes the right to copy, and what is the scope of this right, in your case (exams, CVs, documents certifying merits, etc.)".

To answer this question, it is necessary to determine, first of all, what is the legal regime applicable to access to the information contained in the administrative files, when the person requesting access is a participant in that procedure.

The first additional provision of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) establishes that "the access of the interested parties to the documents of the administrative procedures in process is governed by what determines the legislation on legal regime and administrative procedure".

In accordance with this provision, when the access request is made by a person interested in an administrative procedure that is pending, the administrative procedure regulations will apply.

In this regard, article 53.1.a) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC) recognizes the persons interested in an administrative procedure, among others, the right to access and obtain a copy of the documents contained in the procedures in which they have this condition.

And, in the same sense, article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, recognizes that citizens who have the condition

of persons interested in an administrative procedure in progress have the right to access the file and obtain a copy of the documents that are part of it.

According to the antecedents contained in the consultation, the person requesting access to the file of the selective process is a participant in the same process, which, according to what is established in article 4 of the LPAC has the status of an interested person to the extent that he may be affected by the result of that administrative procedure.

Likewise, according to the facts set out in the consultation, the selective process on which access is requested had not ended at the time the request was submitted. As this Authority has previously highlighted in the IAI 51/2017 report that can be consulted on the Authority's website [www.apdcat.cat](http://www.apdcat.cat), it must be understood that the right of access provided for in the administrative procedure regulations must also be able to be exercised once the respective procedure (initial or administrative appeal) has been completed while the deadline for filing an administrative appeal or administrative dispute is open.

In short, it can be concluded that the access request subject to the consultation, insofar as the person making it has the status of a person interested in the procedure, and that it is an unfinished procedure, must be governed by the right of access that regulates the regulations of administrative procedure.

As for the scope of this right, the administrative procedure legislation recognizes the right of interested persons to access the information contained in the procedures in which they have that condition and to obtain copies of the documents contained in certain terms wide Article 70.1 LPAC, incorporates a definition of what is to be understood by administrative file, which allows to focus the object on what can be to exercise the right of access ("the ordered set of documents and actions that serve as antecedent and foundation to the administrative resolution, as well as the proceedings aimed at executing it"). This same article establishes a first limitation of what would be the object of the right of access when it states that "It falls outside this c the information that has an auxiliary or support nature, such as that contained in applications, files and computer databases, notes, drafts, opinions, summaries, communications and reports internal or between bodies or administrative entities, as well as the value judgments issued by the public administrations, unless they are reports, mandatory and optional, requested before the administrative resolution that puts an end to the procedure. (art. 70.4).

#### IV

The right of access that regulates the administrative procedure regulations is directly linked to the right of defense of the interested person and, as we have seen, is formulated in quite broad terms, however, this does not mean, that this right of access is an absolute right but what, when it conflicts with other rights, such as the fundamental right to the protection of personal data (Article 18 EC), it will be necessary to weigh the different rights at stake, in order to decide which to prevail and to what extent.

In fact, the LPAC itself establishes that it is necessary to apply the limitations provided for in the transparency legislation when it regulates the obtaining of copies or access to the file of the persons interested in the hearing procedure provided for in article 82.1, or when it regulates the right

interested in requesting the issuance of authentic copies of the public administrative documents issued by the public administrations provided for in article 27.4.

In the same vein, article 51 of Law 26/2010, previously mentioned, in regulating the hearing procedure, establishes that the possibility of accessing the file by interested persons will not affect "the excluded data of the right of access".

Thus, even though the administrative procedure regulations recognize in fairly broad terms the right of access of interested persons, to the extent that this right of access entails a limitation of the fundamental right to the protection of data of other different persons of the applicant, a weighting will need to be carried out to determine whether it is a proportionate limitation. In this sense, a repeated doctrine of the Constitutional Court maintains that the limitation of fundamental rights can only occur in a proportionate manner (SSTC 11/81, 57/94, 66/95, 48/05, 206/07, 11/06, 206/07, among others).

A first conclusion, from the point of view of data protection, would be that there would be no inconvenience in providing the applicant, when this is a person interested in a procedure in progress, access and a copy of that information or documentation of the file of the selective process that does not contain personal data. In the case of the query formulated and, in view of the specific request that is made, they could have this consideration, the information that is identified with number 2: "way to calculate the public and private experience and the training" or, the documentation required in the appeal relating to "resolutions of the selection body in which the scoring criteria are approved".

Nor would there be any inconvenience in providing the applicant with access to and a copy of that file's documentation that contains exclusively his personal data, such as the documentation relating to his personal file, his examination and the assessment made by the court regarding the same, the assessment of his experience, etc.

In this sense, article 15.1 of the RGPD, regulates the right of access of the interested party to his data in the following terms: "The interested party has the right to obtain from the data controller confirmation of whether they are being processed personal data that affect you, and if so, you have the right to access this data (...)"

With respect to the rest of the rest of the documentation contained in the file of the selective process that contains information about other people other than the applicant, it will be necessary to analyze whether it is information that contains data that requires special protection, and, for data not included in this category, if by application of the principle of minimization provided for in article 5.c) of the RGPD, they are excessive or unnecessary in relation to the intended purpose.

#### IV

With regard to the identifying information of the people who have intervened in the processing of the selection process due to their position, it should be noted at the outset that there would be no inconvenience in providing certain identifying information about them.

The knowledge of these data by the applicant would be protected by the right to identify the authorities and personnel at the service of the Public Administrations responsible for

process the procedures (article 53.1.a) LPAC), such as the control of the concurrence of the causes of abstention, and where appropriate, of exercising the challenge (articles 23 and 24 of Law 40/2015, of 1 of October, of the legal regime of the public sector and article 64.1.c) of the LPAC), as well as in the right of defense of the affected persons in order to analyze the competence of the bodies that have intervened in the procedure .

The protection to know the identifying data of the people who have intervened in the processing of the file will also be given, by the application of article 24.1.a) of the LTC ("information directly related to the "organization, operation or public activity of the Administration that contains merely identifying personal data"). As has been explained, the LPAC establishes that it is necessary to apply the limitations provided for in the transparency legislation when it regulates the obtaining of copies or access to the file of the persons interested in the hearing procedure provided for in the article 82.1, or when it regulates the right of interested persons to request the issuance of authentic copies of public administrative documents issued by the public administrations provided for in article 27.4. This provision must also be understood as applying with respect to the right of access provided for in article 53.1.a) of the LPAC, and, consequently, what is established in articles 23 and 24 of the LTC.

However, this information would not cover any identifying data of these people, but only those data essential to identify them (Article 5.1.c) RGPD), such as the first and last name, job they hold or other data linked to your intervention in the selection process, not so other data such as your ID number, address, etc. that may appear in the file.

v

With regard to the information contained in the file of the selection process referring to persons other than the person requesting access, it must be taken into consideration that article 9.1 of the RGPD prohibits the processing of special categories of data (those that reveal ethnic or racial origin, political opinions, religious or philosophical convictions or trade union affiliation, and the processing of genetic data, biometric data intended to uniquely identify a natural person, data relating to health or data relating to the sexual life or sexual orientation of a natural person) unless any of the circumstances provided for in article 9.2 RGPD occur that allow the general prohibition of the treatment of these types of data to be lifted data (such as the express consent of the affected person in the terms of letter a) of article 9.2 RGPD).

Also, as explained, article 23 of the LTC applies, according to which requests for access to public information "must be denied if the information sought contains data specially protected personal data, such as those relating to ideology, trade union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not lead to a public reprimand to the offender, unless the affected party expressly consents to it in writing that must accompany the request."

In the case that is the subject of the query, in the absence of knowing what specific data the selection process file may contain, this type of selective procedures may require the incorporation of documentation that contains applicants' health data, either because the

have been contributed by the participants in the process (for example to prove some disability), either as a result of any of the tests carried out (for example, if it were the case, tests involving an evaluation of aspects of the personality ). Thus, in these cases, in accordance with the aforementioned regulations (art. 9 RGPD), the applicant will not be able to access the documentation that contains health data of third parties, unless the request was provided with the express consent of the affected persons.

## VI

Likewise, it must be taken into account that the file to which access is requested may contain information from third parties that may have been the subject of publicity by the city council in accordance with the regulations applicable to the processes selective and the bases of the process in question. This could be the case, for example, of the lists of candidates admitted to the process, the qualification of the tests they have taken and the merits or appointment of the person who has passed the selection. To the extent that this information has already been made public, nothing would prevent its communication to the applicant.

It must be taken into consideration, however, that the seventh additional provision of the LOPDGDD establishes criteria to determine which are the identifying data of the affected parties that are considered appropriate and relevant in notifications by means of announcements and, in the publication of administrative acts . The criterion to be applied with respect to personnel selection processes has been the subject of analysis by this Authority in [opinion CNS 5/2019](#), in which it is concluded that "the identification of participants in personnel selection procedures will be carried out through the first and last name of the person affected by adding four random numerical figures from the number of the national identity document, the foreigner's identity number, the passport or an equivalent document". For the application of this provision, the Authority has published a "Guidance for the provisional application of the seventh additional provision of the LOPDGDD" [which can be consulted at the following link on the Authority's website](#).

There would also be no disadvantage, from the point of view of data protection, in providing the applicant with the final score obtained by the selected person and the job to which he remains attached, in accordance with the provisions of article 9.1 .e) of the LTC, which establishes the obligation to publish on the transparency portal or on the corresponding electronic headquarters, the results of the selective processes for provision and promotion of personnel.

## VII

Regarding the possibility of accessing the rest of the candidates' personal information, and for the purposes of carrying out the corresponding weighting, it is particularly important that the file to which access is sought is part of a competitive competition procedure and that the applicant has the status of a person interested in the same. Thus, it was picked up by the TS in the STS of January 26, 2011 where it was said that the right of access to the file "is certainly aimed at facilitating the right of defense (...) and this is what it means offer the interested party the possibility of knowing in an administrative procedure all the facts and data that may be relevant to the protection of the rights and interests that he wants to exercise by any means".

In weighing up the principle of publicity and transparency that must govern personnel selection processes and the right to the protection of the personal data of the persons affected, the jurisprudence is unanimous in the sense that it must prevail the principle of publicity and transparency. As an example, we can cite the Judgment of the National Court, of April 26, 2012, which, in accordance with this criterion, states that:

"(...)

In the present case, since it is a procedure of competitive competition we must attend to what is indicated in article 103 of the Constitution when it states that the Public Administration serves objectively the general interests and acts in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, with full submission to the law and the Law (paragraph 1) and when it states in paragraph 3 that "The law will regulate the status of public officials, access to public office in accordance with the principles of merit and ability (...)

From this point of view, we must conclude that the consent of those people who participate in a competitive competition procedure is not required for the treatment of the qualifications obtained in said procedure and it as a guarantee and requirement of the other participants to ensure the cleanness and impartiality of the procedure in which they participate. (...)"

In this same sense, Judgment 623/2018 of the Superior Court of Justice of Madrid, includes the following criteria:

"(...)it is affirmed that in the processes of competitive competition, the principle of publicity and transparency becomes essential, as a guarantor of the principle of equality. Thus, the National Court has weighed the principle of publicity with the protection of personal data, reaching the conclusion that during the processing of the selective process the former must prevail, because one of the exceptions to the requirement of consent for the treatment of data is that of the collision with general interests or with other rights of higher value that cause data protection to decline due to the preference that must be granted to that other interest. As it is a competitive competition procedure, the National Court considered that in accordance with Article 103 of the EC, the guarantees required by the processing of personal data cannot be used to obscure or annul these general requirements that oblige the processes to be conducted in compliance minimum requirements for transparency and publicity. The superiority of these other values advises that in this case it is understood that the consent of those people who participate in a competitive competition procedure was not required for the treatment of the qualifications obtained in said procedure and it as a guarantee and requirement of the other participants to ensure the cleanliness and impartiality of the procedure in wh

Therefore, the Defender concludes that the Administration must provide the applicant with access to that information relevant to the selection process that allows him to verify the cleanliness and impartiality of the procedure in which he participated, including the personal data of third parties also participating in the same processes selective with which the applicant competed for the same places."



In the evaluation of the tests carried out and the merits accredited by the candidates, which must be carried out in every selection process, there is undoubtedly a margin of technical discretion that corresponds to the qualifying body. The control of this margin of discretion, to avoid arbitrariness, can only be carried out if the subject harmed by the administrative decision (the candidate not selected) has the possibility of knowing the factual elements from which the assessment carried out in this respect by the selection body.

Thus, in exercise of the right of defense and for the purposes of being able to verify any arbitrary actions of the qualifying body contrary to the principles of equality, merit, capacity and transparency that must govern in any procedure of this type, it would be justified that the applicant can have information on the different aspects that have been assessed in the selection process, that is the knowledge and abilities (through access to the exams carried out), the merits (both academic and experience) and the score obtained, however the question lies in determining whether this information must be exclusively for the candidate finally selected or can also include other candidates who have passed any of the phases of the procedure (in the query reference is made to "all people who have passed the practical test including their file").

The cited jurisprudence resolves the issue in the sense that it should be possible to access the aforementioned information relating to candidates who have obtained a better score than the applicant, but not to those who have obtained a worse score, nor to personal data unnecessary for the defense of the interested party such as address, telephone number

Having information about non-selected candidates would not be justified, since they would have been left out of the selection process and, in principle, their position with respect to the person requesting access would not prejudice their rights and interests.

A different question would be the access to the exams of other candidates who have not been selected but who have obtained a higher score than requested. In this case, access to their evidence may be necessary, for example, for the purposes of checking that the assessment criteria established by the qualifying court have been applied correctly, but it does not seem that in this case knowing their identity can have transcendence for the purposes of his right of defence.

In principle, it can be concluded that, unless the need to access information relating to candidates who have not been selected is duly justified, it would only be justified, by the situation with respect to the claimant and in the exercise of his right of defence, to access to this information (exams and other tests carried out, excluding psychotechnical tests or other tests that may contain health data) relating to the candidate who has finally been selected, since despite the fact that there may be personal information that allows the preparation of a profile of the selected, and consequently a strong impact on their right to the protection of personal data, their knowledge together with their identity, is essential to be able to check the legality of the selective process.

In this same sense, access to the ex officio review referred to in the request could be justified in the event that the person in respect of whom the procedure was carried out has finally been selected, since access to the criteria that were applied to make the decision

to accept the request of that person have a direct impact on the right of the person requesting.

This without prejudice, as mentioned, that if this documentation contains other personal information that is not relevant to achieve this purpose, it may be excluded from access. For example, candidates' CVs (if they are part of the file) provide detailed information about a candidate's profile, training and career path, as well as aspects about skills and competencies required for the development of the position of work offered, but also their identifying data (name, surname, ID, address, telephone, etc.). Or, that the latter has objected to access as a result of the hearing procedure or there are well-founded indications that its communication to the applicant could lead to serious damages for him.

Bearing in mind that access in this case must refer to the information strictly necessary to provide a satisfactory response to the exercise of the aforementioned legitimate purpose (right of defence), in the event that the curriculum vitae are included in the file provided by the candidates, access must be limited to the selected candidate's curriculum vitae and, with regard to the information contained therein, to data relating to training, professional experience and other occupational data that have been taken into account in the assessment of its merits. It will therefore be necessary to omit, prior to access, the personal data that by their nature require special protection, as well as the identification data of the selected person that are unnecessary (DNI, address, telephone or other contact data). Consideration that can be extended to any other type of documentation certifying the requirements or the merits alleged by the selected candidate that may be included in the file.

## VIII

The second of the questions raised in the consultation aims to determine whether: "in the event of having to respond to a request for the right of access and copy of the selection file by a participant in a selective process, the administration must transfer the rest of the participants in it in application of article 31 of 19/2014, of December 29, on transparency, access to public information and good governance so that express within 10 days their conformity or not to the same".

In order to answer this question, it is necessary to take into account, as has been explained, that when the access request has as its object an administrative procedure in progress, this is governed, in accordance with the first additional provision of the LTC, which determines the legislation on the legal regime and administrative procedure.

In this sense, neither Law 26/2010 (art.26), nor the LPAC (art. 53.1.a) art. 82.1) expressly establish that no hearing must be held for the rest of the interested parties in the procedure before giving access to the file to the applicant.

However, it seems advisable that the administrative body responsible for the processing agree to the hearing procedure, given that this procedure will allow a more precise assessment of the consequences that access may have for the people affected.

## IX

The third of the questions raised in the consultation aims to determine whether: "in the event that the rest of the participants have to be transferred, and they express disagreement in this regard, they must also proceed to give a copy of what request".

The purpose of the hearing procedure is to give the possibility to the identified third parties whose rights or interests may be affected by the access that is sought, to bring to the attention of the body that must decide on the access those personal circumstances specific that may affect them and that would justify the denial of access to their data. It must be taken into consideration that it must be a concrete and effective harm to their rights and not merely hypothetical.

In these cases, the competent body, in view of the allegations presented, must decide whether the personal circumstances affecting the interested parties who object to the communication of their data justify the denial of access or not. The mere allegation that the information contains your personal data would not be sufficient to justify a denial of access.

In short, the decision of whether to give a copy of what is requested, despite the fact that there is disagreement on the part of the third party affected by the access, corresponds to the body that has agreed to carry out the consultation procedure, which must motivate your decision

## X

The fourth of the questions raises that: "For all cases, what measures, if there is a right of access, must the administration take in order to guarantee legality in the matter of third-party data protection".

The competent body that must attend to the request for access in accordance with the administrative procedure regulations, must carry out the weighting between the right of access to the file of the person concerned and the right to data protection of third parties that may be included, in order to decide which should prevail and to what extent, taking into account that this right, which is linked to the right of defense of the interested parties, is configured as a broad right to access and obtain copy of the documents that make up the administrative file.

Once this weighting has been carried out and the existence of access limitations has been determined, the administrative procedure regulations do not regulate a specific procedure on how access should be carried out. What is established in article 25 of the LTC can be applied by analogy when it regulates partial access to public information and documentation, according to which:

**"1. If any of the access limits to public information established by the previous articles are applicable, the denial of access only affects the corresponding part of the documentation, and restricted access to the rest of the data must be authorized.**

**2. If the restriction of access or the partial concealment of data makes it difficult to understand the information, the interested party can request a hearing with the Administration to clarify its interpretation. The Administration can provide the necessary contextual clarifications as long as they do not reveal information that has been legally hidden.**

**3. In the case of partial access to public information, the Administration must guarantee, by the most appropriate means, the reservation of the information affected by the legal limitations."**

Thus, in the case of a personnel selection procedure, such as the one included in the consultation, the administration responsible for processing may facilitate access and copying of that information or documentation from the file of the selective process that does not include personal data.

There will also be no disadvantage in facilitating access and copying of that file documentation that contains exclusively the applicant's personal data, such as the documentation relating to his personal file, his examination and the assessment made by the court regarding the same, the assessment of his experience, etc.

Regarding the documentation of the file that contains personal data of third parties must prevent access to information that contains special categories of data, except that with the request for access consent has been provided expressed by the affected person or another of the conditions for exclusion from the treatment prohibition contained in article 9.2 of the RGPD is met.

With regard to the other categories of personal data, the following criteria must be applied:

- With regard to the documents that incorporate identifying information of the people who have intervened in the processing of the selective process by reason of their position, access may be given to those personal data essential to identify them, such as first and last names, job they hold or other data linked to their intervention in the selection process, and omit from access other data such as their ID number, address, etc., which are unnecessary.
- With regard to the information that has been the subject of publicity by the city council in accordance with the regulations applicable to the selective processes and the bases of the process in question, such as for example the lists of applicants admitted to the process, the qualification of the tests they have taken and, the merits or the appointment of the person who has passed the selection process, can be communicated to the applicant. The city council must take into account the criteria for the publication of this data contained in the seventh additional provision of the LPDGDD, in the terms of the provisional guidance that this Authority has published in relation to its application.
- With regard to the candidates finally selected, access to their exams or other tests carried out as well as the CVs provided will be facilitated, but personal data that by its nature require special protection must be omitted, as well as the data of the selected that are unnecessary (DNI, address, telephone or other contact details, etc.).
- It will be necessary to limit access to information relating to the exams or other tests carried out as well as the CVs of the applicants for the selection process who have not finally been selected. If it is argued that the need to access exams or other tests carried out by candidates who have passed the access tests with a higher score than the applicant, access may be granted with the prior pseudonymization of any identifying data to state

**In accordance with the considerations made in this opinion in relation to the query raised, the following are made,**

### **Conclusions**

- 1. Access to a personnel selection file in process by anyone who holds the status of person interested in it is governed by the administrative procedure regulations. The terms in which this access must occur are those summarized in legal basis X of this opinion.**
- 2. The administrative procedure regulations do not provide for the transfer of the access request to the rest of the participants in the process, however, it seems advisable that the administrative body responsible for the processing agree to the hearing procedure, given that this procedure will allow a more precise assessment of the consequences that access may have for the affected people.**
- 3. The decision whether to grant access to what is requested, despite the disagreement of the third party affected by the access, requires a weighing of the rights and interests at stake, through a reasoned resolution.**

**Barcelona, May 28, 2019**