

CNS 33/2019

**Opinion on the query made by a town council in relation to the request for access to information on the salary supplements of the municipal secretary presented by a local media.**

**A city council formulates a query in relation to the request for access to information on the salary supplements of the municipal secretary presented by a local media.**

**Specifically, it is stated that the City Council has been asked for information on the salary supplements, including productivity, of the municipal secretary.**

**Reference is made to the Authority's IAI 3/2019 report in which it is concluded that "the right to data protection does not prevent the person making the claim from being given information on the allocation of productivity supplements and gratuities from the Comptroller municipal, or from other places or workplaces in the council in which the character of trust or special responsibility may come together."**

**It is pointed out that the functions of the municipal secretary and the comptroller are not the same, and in this sense the opinion of the Authority is sought regarding the application of the criterion followed in the aforementioned report in the case of the secretary municipal, taking into account the functions included in the statement of reasons for Royal Decree 128/2018.**

**After analyzing the query, and in accordance with the report of the Legal Counsel, I issue the following opinion.**

**I**

**(...)**

**II**

**The City Council is questioning the possibility of facilitating access to information on salary supplements, including productivity, from the municipal secretary, to a local media outlet.**

**The remuneration data of municipal workers is personal data, "any information about a natural identified or identifiable ("the interested party") and identifiable (Article 4(1) of the RGPD) person "all person whose identity can be determined, directly or indirectly, in particular by means of an identifier, for example a number, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic identity, psychic, economic, cultural or social of said person."**

**Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency). In accordance with article 6.1 of the RGPD to carry out a treatment it is necessary to have a**

legal basis that legitimizes this treatment, either the consent of the affected person, or any of the other circumstances, such as that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c) or that "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment" (letter e).

As can be seen from article 6.3 of the RGD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), the treatment of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGD when so established by a rule with the rank of law.

On the other hand, article 86 RGD provides that "The personal data of official documents in the possession of some public authority or public body or a private entity for the performance of a mission in public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

Law 19/2014, of December 29, 2014, on transparency, access to information and good governance (hereafter LTC), aims to regulate and guarantee the transparency of public activity, and provides in article 18 that "people have the right to access public information, referred to in article 2.b, as an individual or in the name and representation of any legally constituted legal person" (paragraph 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".

State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter LTE), in its articles 12 (right of access to public information) is pronounced in similar terms and 13 (public information).

The remuneration information requested is "public" for the purposes of article 2.b) of the LTC and, therefore, remains subject to the right of access (art. 18 of the LTC). In accordance with article 20 and s. of the LTC, this right may be denied or restricted for the reasons expressly established in the Law. Specifically with regard to information that contains personal data, it is necessary to assess whether the right to data protection of the affected persons -in this case, the City Council secretary-, would justify or not the limitation of the right to 'access to public information recognized in article 18 LTC.

### III

The object of access consists, according to the query, of information on all salary supplements assigned to the municipal secretary. This would include the destination plugin, the specific plugin, and the productivity plugin. This could also include gratuities for extraordinary services provided outside the normal working day.

Given that the information requested does not affect data considered particularly protected in the terms provided for in article 23 of the LTC, the communication or access to said information requires a reasoned weighting between the public interest that may have for citizens the knowledge of said information and the right to data protection of the affected persons, in accordance with the criteria set out in article 24.2 of the LTC:

"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 the disclosure and the 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. (...)"

The transparency legislation obliges public administrations to publish the remuneration of public employees in two different ways: one, through the individualized publication of "remunerations, compensations and allowances, activities and assets, remunerations, compensations and allowances, activities and the assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of public bodies, societies, foundations and consortia, and the compensations that they must stop receiving when they stop exercising the position. " (art. 11.1.b) LTC); the other, through the publication of "the general information on the remunerations, compensations and per diems received by public employees, grouped according to the levels and bodies." (art. 11.1. e) LTC).

In accordance with these forecasts, the local administration must publish individually and for each workplace the information on all the remuneration received (full amount for any type of remuneration, compensation or allowance) of those people who have the consideration of senior positions, while for the rest of the staff, it is sufficient that this information is provided in a generalized way and grouped according to the functions of the levels and bodies.

For these purposes, and in accordance with article 4.2.b), they are considered senior positions: "At the service of the local administration, the local representatives and the holders of the superior and management bodies, in accordance with what is established by the legislation of the local regime."

Certainly this precept does not specify clearly which are the positions that would have the consideration of high positions of the local administration for the purposes of compliance with the obligations of transparency. Although there is no doubt about considering local representatives - the councilors and the mayor - as high-ranking officials, with regard to the "holders of superior and managerial bodies", the wording of this precept may raise some doubts interpretive

It is worth saying that there is no rule at the local level that defines the high position. There is also no common regime in organizational matters that specifies what is to be understood by "holders."

of superior and managerial bodies", categories that are only used within the regime applicable to municipalities with a large population (Title X, article 130 of the LBRL), and from which both common regime municipalities and those that they have specific regimes.

In this regard, as was set out in the IAI 3/2019 report to which the consultation refers, each municipality must determine, in accordance with its organizational regulations, its own management staff, if it has any ( art. 306 of the TRLMRLC).

Warn that beyond the provisions of article 11.1 LTC, access to certain retributive information associated or linked to a certain position or workplace in the public administrations, must also be assessed from the perspective of the provisions of the LTC in terms of organizational structure and publication of the RLT. Thus, article 9.1.b) of the LTC provides for the publication of the organizational structure and article 9.1.d) provides for the publication of the RLT.

In this sense, it should be borne in mind that the destination supplement (which rewards the level assigned to the position occupied), and the specific supplement (which rewards the particular conditions of certain jobs in terms of technical difficulty, dedication, responsibility, incompatibility, dangerousness and burdensomeness), once approved and assigned to the site, become essential and necessary content of the RLT.

Remember that the civil service regulations state that the RLT must include, at a minimum, among other aspects, the assignment group, the specific supplement and the destination supplement associated with each job (article 29 of the recasting in a Single Text of the precepts of certain legal texts in force in Catalonia in the field of public service, approved by Legislative Decree 1/1997, of 31 October and article 169 Regulation of personnel in the service of local entities approved by the Decree 214/1990, of July 30).

The publication of this information through the LRT assumes that citizens can access in a relatively easy way the amounts assigned to the respective workplaces to these two concepts (destination and specific supplement), either through the same RLT or relating the information on the group and category of a specific position contained in the LRLT with the amounts approved in the respective budget laws for this group or category. Taking into account the regulatory provisions in this regard, it does not appear that the right to data protection can limit the applicant's right of access to the amounts allocated to the municipal secretary for these concepts.

The productivity supplement, on the other hand, rewards the special performance, extraordinary activity, interest, initiative, etc., with which the workplace is developed, and is therefore directly related to the physical person who occupies this work placement. The same can be said with respect to gratuities for extraordinary services that may have been received.

It is a criterion supported by this Authority in the matter of access to the remuneration information of public employees in previous reports (among others, the IAI report 3/2019 in which the access to remuneration information of the municipal comptroller was considered this same City Council), that the provisions of article 11.1.b) LTC can be extended with respect to requests for access to the information of personnel who occupy positions of s

of special responsibility within the organization or of a high level in the entity's hierarchy, of free appointment, or that involve a high level of remuneration.

In this case, in accordance with article 92 bis of the LRBRL:

1. They are necessary public functions in all local corporations, whose administrative responsibility is reserved for local administration officials with national qualification: a) The Secretariat, including the public faith and mandatory legal advice. b) Internal control and auditing of economic-financial and budgetary management, and accounting, treasury and collection. (...)

2. The scale of local administration officials with national qualifications is subdivided into the following subscales: a) Secretariat, to which the functions contained in section 1.a) above correspond. b) Intervention-treasury, to which the functions contained in section 1.b) correspond. c) Secretariat-intervention to which correspond the functions contained in sections 1.a) and 1.b).(…).

On the other hand, Royal Decree 128/2018, of March 16, which regulates the legal regime of Local Government officials with national qualifications, provides in article 7 that in all local entities there is a job called Secretary, which has the administrative responsibility for the functions of public faith and mandatory legal advice with the scope and content provided for in this royal decree, and more specifically in article 3 of this rule.

Pursuant to the provisions of article 2 of this rule: "2. Whoever holds the administrative responsibility for each of the functions referred to in section 1 will be assigned the direction of the services responsible for their implementation, without prejudice to the attributions of the governing bodies of the Local Corporation in the matter of organization of administrative services ."

Taking into account that the person holding the position of secretary is the one who exercises the direction of the function of public faith and legal advice in municipal affairs, it does not seem that it can generate doubts that it is a position with a high level of responsibility regarding the decisions and/or actions of the governing bodies.

In general, the purpose of Law 19/2014 is, in accordance with art. 1.2 LTC, "... establish a relationship system between people and the Public Administration and the other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and responsibility in public management."

The control of the use that the administration can make of this type of emoluments linked to people who hold positions with a high level of responsibility and also high levels of remuneration, can be relevant for the purposes of transparency. In this sense, their situation would be comparable to that of managerial positions (considered senior positions for the purposes of article

11.1.b) of the LTC). Access to this information would allow citizens to evaluate and form a critical opinion of the management of human resources carried out by the City Council, with respect to remuneration concepts where the award is based on aspects of discretion, an issue that reinforces the need for transparency.

From the point of view of the affected person, it is true that the disclosure of information on the salary supplements received could facilitate the obtaining of an economic profile on that person. Even so, when it comes to employees or public officials who occupy positions with a high level of responsibility, which tend to bring with them high levels of remuneration, they must foresee the possibility that citizens can access through the exercising the right of access to information about all their remuneration, whatever the concept by which they perceive it, and not only with respect to those related to the destination or specific supplement whose disclosure is planned for all public workplaces.

For all that, it is concluded that the public interest in obtaining the remuneration information referred to the municipal secretary should prevail over the right to data protection of the affected person. In this sense, the applicant's access to said information would be justified for the purposes of complying with the purpose of transparency. All of this, without prejudice to the fact that, as a result of the hearing procedure provided for in article 31 of the LTC, circumstances are seen in the affected person that may justify a different assessment by the City Council.

## **CONCLUSION**

The right to data protection would not prevent the City Council from providing the person requesting the information on all salary supplements received by the municipal secretary.

Barcelona, July 19, 2019