

CNS 45/2019

**Opinion in relation to the consultation made by a town council on the access by a trade union delegate to different means of replenishment made by the workers of the City Council within the procedure for evaluating the jobs and approving the relationship of work places**

**A request is submitted to the Catalan Data Protection Authority for an opinion on the possibility of handing over to a trade union representative the appeals made by the city council workers within the procedure for the assessment of jobs and of approval of the list of jobs.**

Having analyzed the consultation, which is accompanied by the letter presented to the town hall by the trade union representative, in accordance with the report of the Legal Counsel I issue the following report:

I

(...)

II

**The City Council requests from this Authority its pronouncement on the possibility of communicating to a representative of the workers the requested documentation consisting of (in the terms formulated by the applicant himself) the "replacement resources formulated by the workers of the "city council within the administrative procedure for the relationship and assessment of jobs, as dictated by the Transparency law, once the submission dea**

**The city council does not provide any other information that allows to identify the context in which this request has been submitted, if it refers to a procedure in progress or a completed procedure, nor to which procedure in the procedure for drawing up or reviewing the relationship of jobs it refers to.**

**From the point of view of data protection regulations, it is necessary to analyze, first of all, whether the requested information contains personal data in the terms of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April, relating to the protection of natural persons with regard to the processing of personal data (hereafter, RGPD). This defines personal data as "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. "(article 4.1 RGPD).**

Regarding the relationship of workplaces (RLT), which is the subject of the file on which the access request is made, article 74 of the Basic Statute of the public employee, approved by Royal Legislative Decree 5/2015, of October 30 (EBEP), establishes: "Public administrations must structure their organization through workplace relationships or other similar organizational instruments that include, at least, the denomination of the positions, the professional classification groups, the bodies or scales, if applicable, to which they are attached, the provision systems and the complementary remunerations. These instruments are public."

As for local bodies, art. 283 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC) establishes, in relation to the employment relationship (RLT), what:

"(...)

2. The local bodies must form the list of workplaces in their organization, in accordance with what is established by the basic legislation of the State and of the development of the Generalitat.

3. The list of jobs may exceptionally attribute to one or some of these positions the condition of multi-purpose, in accordance with the special needs of the local body. In this case, the corresponding temporary periods must be determined, and the general selection conditions must include the requirements required to perform the different functions assigned to the job.

4. A copy of the list of jobs - as well as the workforce - must be sent to the competent Department of the Generalitat in matters of cooperation with the local Administration of Catalonia, within thirty days from approval, as well as publishing it in full in the BOP and the DOGC."

Likewise, Legislative Decree 1/1997, of 31 October, is applicable, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in the field of public service, which in their articles 29 to 33 regulate workplace relations and their characteristics, as well as personnel classification criteria, and organizational manuals (article 66).

Therefore the RLT is the technical instrument through which all the workplaces of a certain organization are organized, grouped by civil servants, casual and labor personnel, which establishes, among others, the bodies and scales to which each job is assigned, the system of provision for each position, the assignment group, access requirements and supplementary remuneration. Its content, which does not include personal data, is public.

The publicity of the RLT derives from both the public service regulations and the transparency regulations provided for in article 9.1.d) Law 19/2014, of December 29, on transparency, access to public information and good government (LTC hereafter), that the information relating to the institutional organization and the administrative structure that the Administration must make public in application of the principle of transparency must include "the list of jobs of civil servants, labor and casual, and the workforce and the list of temporary contracts and internships not linked to any job in said list of positions".

The preparation of the list of jobs, in accordance with the civil service regulations requires the completion of, at least, the procedures consisting of the description, assessment and classification of the jobs; the negotiation with the union representation of those aspects provided for in article 37.1 of the EBEP; and finally its publication.

Thus, article 31 of Decree 214/1990, of July 30, which approves the Personnel Regulations for the Service of the Local Authorities of Catalonia, establishes, as regards the procedure for the preparation and modification of the RLT , the next:

"- 1 The elaboration of the list of jobs must conform to criteria of rationality, economy and effectiveness. For its justification, the following documents must be included in these relationships:

a) The justifying study of the administrative structure or its functional organizational chart.

b) The definition of each job or group of jobs taking into account, in any case, the criteria of qualification, specialization, responsibility, command, effort, difficulty, dedication, incompatibility, dangerousness and burdensomeness.

- 2 The definition of jobs requires the prior analysis and description of each position and its subsequent classification, in order to determine, in the case of positions reserved for career civil servants, one of the thirty levels that quantify the assigned target plugin and, if applicable, the specific plugin.

- 3 The modification of the list of jobs, in the case referred to in article 27.1 of this Regulation, must be justified by means of the report that accredits the circumstances of article 27.2 of this Regulation and , if applicable, the definition of the places in question."

The different procedures that make up the file corresponding to the approval of the RLT may contain personal data of the people who have intervened in its approval and of third parties (for example people who have submitted allegations in a public information procedure, or people who have filed an appeal in any of their procedures). The data available to the City Council, regarding these files, are personal data and are protected by the principles and guarantees established by the RGPD.

### III

In accordance with the definition of treatment in article 4.2 of the RGPD "consultation, use, communication by transmission, dissemination or any other form of enabling access, access or interconnection, limitation, deletion or destruction " of personal data, are data treatments subject to the principles and guarantees of the RGPD. Therefore, the communication of personal data by the City Council, as a result of the request made by the person now claiming, is data processing under the terms of the RGPD.

The RGPD provides that all processing of personal data must be lawful, loyal and transparent in relation to the interested party (article 5.1.a)) and, in this sense, establishes a system of legitimation of the

data processing that is based on the need for one of the legal bases established in its article 6.1 to apply. Specifically, sections c) and e) of article 6.1 of the RGPD provide respectively, 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", or if "it 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".

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

At the same time, article 86 RGPD provides that "The personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity of 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."

In this sense, Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC hereinafter) aims, among others, to "regulate and guarantee the right of access of people to public information and documentation" (art. 1.1.b).

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".

Also, the first additional provision of the LTC establishes that "the access of the interested parties to the documents of the administrative procedures in progress is governed by what is determined by the legislation on the 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 status of persons interested in a administrative procedure in progress have the right to access the file and obtain a copy of the documents that are part of it.

**This without prejudice to the application in these procedures of the limitations provided for in the LTC, in accordance with what is established in article 82.1 of the LPAC**

**In the absence of other information and given the terms in which the request is made and the express reference to transparency legislation, we must understand that the applicant does not act as an interested party in the procedure and that the access is subject to transparency regulations.**

**Therefore, the documentation requested by the workers' representative is "public information" for the purposes of the LTC and would remain subject to the access regime provided for in this regulation. Consequently, from the point of view of the right to the protection of personal data, the communication of this information can be considered a lawful treatment covered by letter c) of article 6.1 of the RGPD, as long as it is appropriate to what is established by the transparency legislation and the rest of the principles and guarantees of the RGPD.**

#### **IV**

**In accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information containing personal data, the regime provided for in articles 23 and 24 of the LTC must be applied.**

**Thus, in accordance with article 23 of the LTC "requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to the 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 entail a public reprimand to the offender, unless the person affected expressly consents to it in writing that must accompany the request."**

**For its part, article 15.1 of Law 19/2013 establishes that "(...) If the information includes specially protected data referred to in section 3 of article 7 of Organic Law 15/1999, of December 13, or data relating to the commission of criminal or administrative offenses that did not entail a public reprimand to the offender, access may only be authorized if the express consent of the affected person is obtained or if the latter is protected by a law with the rank of Ley."**

**These precepts limit access to data relating to physical or mental health or any other information deserving of special protection. In the case at hand, it seems that it can be ruled out, a priori, that the information requested contains special categories of data, but if it does, access should be limited.**

**In the event that the requested resources contained information about the employees or public officials in charge of processing the file, article 24.1 of the LTC provides that "Access to public information must be given if it is of information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail" .**

Consequently, in accordance with this precept there should be no inconvenience in providing the claimant with the merely identifying data (name and surname and position) of the persons responsible for processing the procedure that could contain the resources presented.

v

Beyond that, access to the rest of the personal information of workers who have submitted an appeal in the RLT preparation procedure will be subject to article 24.2 of the LTC according to which when "it is other information that contains personal data not included in article 23, access to the information can be given, with the prior weighting of the public interest in the 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. (...)."

Thus, access to the requested personal information goes through a prior, reasoned weighting between the public interest in the disclosure of the information and the rights of the affected persons.

It can be ruled out, a priori, that the requested documentation refers to minors, as well as that its communication could affect people's safety.

Regarding the purpose of access, although in accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, the fact that the applicant expresses which is the purpose pursued and, in short, the reasons for which it is interesting to know the information, adds a relevant element to be taken into account to determine whether access can be granted, since the purpose, in accordance with article 24.2 b) LTC, is one of the weighting elements between the public interest in the disclosure of information and the right of the people affected.

In the case at hand, the person making the request does not state what the purpose of the access is beyond stating that he is submitting the letter in his capacity as "trade union delegate and member of the negotiating table collective of workers" and representing the "committee of civil servants and labor of the city council". This question is relevant, given that the boards or staff delegates (art. 39 of the EBEP), as well as the Company Committee (art. 63 of the revised text of the Workers' Statute, approved by royal legislative decree 2 /2015, of 23 October, hereinafter ET), are the specific bodies representing civil servants and public workers with employment contracts respectively, and as such, exercise the functions granted to them by the corresponding regulations (art. 40 EBEP and 64 ET), among others, the function of monitoring compliance with current regulations.

Specifically, article 40.1.a) of the EBEP, states that the Staff Boards and the Staff Delegates have the following functions:

**"1. The Personnel Boards and the Personnel Delegates, as the case may be, will have the following functions, in their respective areas: a) Receive information on the personnel policy, as well as on data relating to the evolution of remuneration, probable evolution of employment in the corresponding field and performance improvement programs. b) Issue a report, at the request of the corresponding Public Administration, on the total or partial transfer of the facilities and implementation or review of their organizational systems and work methods. c) Be informed of all the sanctions imposed for very serious faults. d) Have knowledge and be heard in the establishment of the working day and working hours, as well as in the holiday and leave regime. e) Monitor compliance with current regulations regarding working conditions, prevention of occupational risks, Social Security and employment and exercise, as the case may be, the appropriate legal actions before the competent bodies. f) Collaborate with the corresponding Administration to achieve the establishment of measures to ensure the maintenance and increase of productivity."**

**In addition, this same article recognizes them as interested parties in the administrative procedures when it states that "The Personnel Boards, collectively, by a majority decision of their members and, in their case, the Personnel Delegates, collectively, will be legitimized to initiate, as interested parties, the corresponding administrative procedures and exercise administrative or judicial actions in everything related to the scope of their functions". (article 40.2 EBEP)**

**With regard to the workforce, article 64 of the ET establishes that the Works Council has the right to be informed about the issues that may affect the workers, and about the situation of the company and the evolution of the 'occupation of this, among others.**

**On the other hand, the participation of the trade unions in the procedures for approval and modification of the RLT cannot be ignored. In this sense, article 37.1 of the EBEP establishes the need for a negotiation process in various matters, among which: "b) The determination and application of the complementary remuneration of the officials, and ic) The rules that set the general criteria in matters of access, career, provision, job classification systems, and human resource planning plans and instruments." .**

**In accordance with this provision, the approval of the RLT and those modifications that have an impact on the working conditions of the staff such as, for example, the assignment of new tasks to the workplaces, the assignment of workplaces to different groups, qualification requirements or knowledge of languages, the provision system, the modification of the working day regime or remunerative modifications, involve a process of negotiation with the workers' representatives.**

**In this context, in accordance with the civil service regulations, the representatives of the workers who participate in the negotiation procedure for approval or modification of the RLT, and, in the exercise of these functions (legally assigned), or when they have the status of interested parties in an administrative procedure must have access to the documentation that makes up th**

of approval or modification of the RLT that allows them to analyze and assess those issues that have an impact on the working conditions of the staff.

In this sense, the Judgment of the Supreme Court of STS 111/2018, of February 7, comes to collect the criterion that

"(...) the workers' representative bodies (art. 64 ET) and union delegates (art. 10.3 of the Organic Law 10/1985 - LOLS-) are the only ones that have recognized the right to access certain information to the extent that it constitutes the essential instrument so that they can develop the functions of representation, defense, vigilance and control that are their own (STC 142/93 and STS/4<sup>a</sup> of 21 December 2015 -rec. 56/2015 -). In particular, the trade unions - such as the plaintiff and the others joining the lawsuit - need to be able to fulfill the function they are constitutionally assigned (arts. 7 and 28 CE), for which it will be essential for them to access certain data of the workers to whose representation and defense they owe, without this function being limited in all cases to their own affiliates, because it will be the specific need and purpose of their scope of action that will serve to delimit the type of data and the scope of the content of the information that is required.

(...) it will be justified for the company to communicate personal data of the workers to the legal and/or union representatives so that they can exercise the powers that the law confers on them, this being a scenario that conforms to the exception of art. . 11.2 a) LOPD.

It seems obvious that yes, both art. 64 ET, as 10.3.1 LOLS confers rights of information and documentation to unitary and union representatives, the obtaining of the same through the communication of the company will be covered by that exception when, in fact, it is data that have direct connection with the exercise of those powers."

In the case we are dealing with, it is necessary to take into consideration not only the right that the workers' representatives have to be informed in those aspects that affect working conditions, as well as to monitor compliance with the current rules regarding working conditions , in accordance with what is established in the aforementioned articles 40 of the EBEP and 64 of the ET, which would also allow them to access the documentation that makes up the file for approval or modification of the RLT, but especially the fact that they must intervene in the negotiation of the aspects provided for in article 37.1 EBEP that may be affected by the approval or modification of the RLT.

However, with regard to access to the personal data of workers who have submitted an appeal in the procedure for drawing up the RLT, the weighting of the interests at stake is to analyze whether the right of the workers' representatives protected in the exercise of the functions that the public service regulations attribute to them must prevail over the privacy of the municipal workers who have submitted an appeal (let's take for example with regard to the procedure for the assessment of a job that must ultimately involve the attribution of a certain destination supplement or a specific dedication regime).

It will be necessary to analyze whether these data are necessary for the exercise of their functions, taking into account the principle of minimization, according to which the processed data must be "Adequate, pertinent and limited to what is necessary in relation to the purposes for which

are treated (minimization of data)" (Article 5.1.c) of the RGPD. In other words, if this purpose can also be achieved by communicating the information in a less intrusive way.

At the outset, and in the absence of more concreteness on the purpose of the access, the purpose pursued by the representative of the workers, framed in the functions we have referred to, could also be achieved by accessing information on the number of resources presented, the allegations made, what has been the response of the body in charge of processing, and the consequences it has had in the processing of the file, without the need to reveal the identity of the people who have made them.

It must be taken into consideration that article 25 of the LTC provides for the possibility of giving partial access to the requested information in the cases where any of the limits of access to public information are applicable: "if any of the access limits to public information established by the previous articles, the denial of access only affects the corresponding part of the documentation, and restricted access to the rest of the data must be authorized".

It cannot be overlooked that providing this information, which refers to a limited and reduced group of people (the working people of the town hall), and which provides information on the content of the resources and the allegations made, (which they can relate to issues, such as disagreement with the assessment of a certain position or the requirements established to fill it) can, in some cases, make the person who submitted it identifiable, even if no data is provided that allows it to be directly identified. But despite this, this risk is considered acceptable given the functions attributed to the workers' representatives and the need to know the allegations made.

Consequently, in accordance with the data protection regulations, the weighting of the interests at stake would lead to the conclusion that, in principle, for the exercise of the functions entrusted to the representatives of the workers in relation to the assessment procedure of the jobs and approval of the RLT, it is not necessary to know the identity of the people who have submitted these appeals, but the information relating to the content of the appeals and their outcome can be provided.

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

## **Conclusions**

The data protection regulations would not prevent the worker's representative from accessing information regarding the number of appeals submitted, the allegations made, the response of the body in charge of processing, and the consequences had in the processing of the file. On the other hand, and in the absence of more concreteness in the access request, it would not be justified to give access to the full text of the resources so that the affected people could be directly identified.

Barcelona, 9 October 2019