

Opinion in relation to the consultation of a city council on the access of the "company committee delegate" to information of its public employees

A letter from a city council is presented to the Catalan Data Protection Authority in which it considers whether it can hand over to the "delegated company committee" certain information about its public employees, specifically, a list of the remuneration received by them during the year 2019 and the monthly TC2 documents.

In the same letter, two other inquiries are raised with the Authority which, since they refer to different issues, will be analyzed in specific opinions (CNS 44/2019 and CNS 45/2019).

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), defines data processing as "any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2).

The delivery of information relating to the remuneration received by public workers, as well as the TC2 documents, to the "company committee delegate", as stated in the access request, constitutes a processing of personal data that remains subject to legislation of data protection.

The RGPD establishes that all processing of personal data must be lawful, fair and transparent (Article 5.1.a)). In order for this treatment to be lawful, one of the legal bases of article 6.1 of the RGPD must be met, either the consent of the affected person (letter a)) or one of the other legal bases provided for in the same article, such as, for the purposes that concern, that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c)).

As can be seen from article 6.3 of the RGPD 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 (hereinafter, LOPDGDD) , the processing of data can only be considered based on this legal basis of article 6.1.c) of the RGPD when this is established by a rule with the rank of law.

In the case we are dealing with, the information has been requested by the "delegated company committee", an expression from which it can be understood that we are dealing with a request made by a body representing municipal public workers.

This being so, and in relation to personnel subject to labor law, it will be necessary to take into account the provisions established in the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 5/2015, of October 23 (in forward, ET).

This law attributes to the staff delegates (article 62 ET) and to the company committee, as a collegiate body representative of all the company's workers (article 63.1 ET), certain functions for the exercise of which recognizes the right to access certain information, which could include personal data of workers.

Article 64.1 of the ET provides that "the works council will have the right to be informed and consulted by the employer on those issues that may affect the workers, as well as on the situation of the company and the evolution of employment in the same, in the terms provided for in this article." And he adds that information is understood as "the transmission of data by the employer to the works council, so that it is aware of a certain issue and can proceed to its examination (...)."

Next, sections 2 to 5 of this article 64 of the ET contain specific forecasts in relation to the questions or matters on which the works councils have the right to receive information, some of them with a quarterly frequency (article 64.2 ET), others annually (article 64.3 ET) and others when appropriate (article 64.4 and 5 ET).

All this for the purpose of exercising, among others, the function of "monitoring compliance with the current labor, social security and employment standards, as well as the rest of the agreements, conditions and company practices in force, formulating, in his case, the appropriate legal actions before the employer and the competent bodies or courts" (article 64.7.1.a) ET).

It is also necessary to keep in mind, in relation to civil servants, that the revised Text of the Law on the Basic Statute of the Public Employee, approved by Royal Legislative Decree 5/2015, of October 30 (hereinafter, TRLEBEP) , attributes to personnel boards and personnel delegates, among other functions, that of "receiving information, on personnel policy, as well as on data relating to the evolution of remuneration, probable evolution of employment in the corresponding scope and performance improvement programs" (article 40.1.a)).

On the other hand, it will also be necessary to take into account the provisions of Law 19/2014, of 29 December 2014, on transparency, access to information and good governance (hereafter, LT).

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (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".

The information on the remuneration received by public workers, and the monthly TC2 documents, available to the City Council must be considered "public information" for the purposes of the LTC.

The first additional provision, section 2, of the LTC establishes that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law. "

Given that, as we have seen, the workers' representative bodies have a specific regime of right of access to certain information, it seems appropriate to consider that the request for information presented by the "delegated company committee" has of the provisions of the ET, and if applicable of the TRLEBEP, and, additionally, in what is not provided for by these rules, those of the LTC.

III

The workers' representative body requests a list of the remuneration of City Council employees for the year 2019. It does not specify, however, in this request, if this list should be referred to, individually, to all remuneration concepts received by all municipal public workers.

Obviously, from the point of view of the protection of personal data, there would be no inconvenience in giving him the listed finger in an anonymized way, that is, so that the public workers are not identified or identifiable (consideration 26 RGPD).

It should be remembered that the RGPD has given a letter of nature to the principle of data minimization (article 5.1.c)), according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".

Thus, the anonymization of the data could in some cases be a valid option as long as knowing the identity of the public workers was not relevant to achieve the intended purpose of the request for information by the workers' representative bodies.

Given that, in the present case, he only indicates, in his request, that he is asking for the information "to have knowledge", it cannot be ruled out that for this purpose it would be sufficient to give him an anonymized list of said remunerations.

In any case, given this lack of concreteness, it is considered appropriate to analyze whether the workers' representative body could access all the remunerations received by public workers in such a way that they are identified or identifiable.

As we have seen, article 64 of the ET provides that the works committee has the right to be informed and consulted by the employer on those issues that may affect the workers, as well as on the situation of the company and the evolution of employment in the company, in the terms established in the same precept.

As this Authority has decided on previous occasions (among others, CNS 41/2018 or CNS 28/2017, available on the website <https://apdcat.gencat.cat>), aside from the personal data that may be included in the basic copy of the contracts and which can be known by the works council in the legally established terms (articles 8.3.a) and 64.4 ET), in general, the provisions of the ET translate into a right of the committee of 'company to receive information on the various issues that are broken down in the precepts of the ET, without this rule clearly stating that this information must be linked, individually, to each worker.

Consideration that can be extended to the assumption that the request for information was made by the representative bodies of civil servants (staff boards and staff delegates), in accordance with article 40.1.a) of the TRLEBEP.

It is considered, for the purposes of interest, that the right to obtain information on the situation of the company and the evolution of employment in the company - or on the evolution of remuneration - that the regulations (ET and TRLEBEP) acknowledges the workers' representative bodies is not equivalent to knowing the details of the remuneration of all public workers.

information, individually and associated with all workers, would go beyond the ET and TRLEBEP forecasts regarding the information that must be communicated to said representative bodies.

In addition to all this, it is necessary to take into account the provisions of the LTC, access regime of supplementary application for requests made by the workers' representative bodies.

Considering that the requested information does not appear to contain data deserving of special protection (Article 9 RGPD), for the purposes of granting or denying access, the provisions of the article must be taken into account 24.2 of the 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."

For the purposes of this weighting, special consideration must be given to the fact that the person requesting access is a "company committee delegate" - meaning a body representing the workers - and that their request would be framed in the exercise of their duties, such as that of monitoring compliance with current regulations, which the ET (and where applicable TRLEBEP) attributes to him and in respect of which he recognizes the right to obtain certain information from the employer.

At the same time, it is necessary to take into account the public interest in the disclosure of information to the workers' representative bodies.

The Preamble of the LTC mentions that "in a context of a democratic state and the rule of law, all public authorities have the legitimacy given to them by citizen participation in their configuration (directly or indirectly), which obliges to give an account to citizens, in accordance with the principle of responsibility, of their activity and the management of the public resources that have been made available to them."

It is therefore part of the philosophy of transparency legislation that Public Administrations must be accountable to citizens, in relation, among other issues, to the management and destination that they give to public funds, such as which are allocated to the remuneration received by public workers.

If citizens must be able to have this ability to control and hold public administrations to account with more reason, if applicable, this ability must be recognized in the representatives of workers in the exercise of the functions specifically granted to them by the regulations.

It should also be borne in mind that the LTC obliges the City Council to publish certain information in relation to the remuneration of its staff.

Thus, article 11.1 of the LTC provides that they must be made public:

"b) The remuneration, compensations and allowances, the activities and the assets of the members of the Government, senior officials of the Public Administration and the management staff of the entities

public, societies, foundations and consortia, and the compensations they must receive when ceasing to hold office. (...) e) The general information on the remunerations, compensations and allowances received by public employees, grouped according to the levels and bodies."

In accordance with this precept, the remuneration received by senior local officials must be published on the City Council portal individually for each job and for any type of remuneration, compensation or allowance (article 11.1.b) LTC) .

Regarding this, article 4.2.b) of the LTC provides that, for the purposes of what the law establishes, "local representatives and the holders of superior and managerial bodies are considered high-ranking officials in the service of the local administration , in accordance with what is established by local regime legislation".

As for the rest of the municipal workers, the information on remuneration must be published in an aggregated way, that is to say, associated with the City Council jobs grouped according to the levels and the bodies to which they belong (article 11.1. e) LTC), without, in this sense, having to indicate the identity of the specific person who occupies a certain job.

To the extent that this information must be made public, there can be no doubt, from the perspective of the right to data protection, about the possibility of handing it over to the workers' representative bodies under these terms.

But trying to access retributive information that is directly related to the physical person who occupies a job (such as three years, the productivity supplement, bonuses, overtime pay, overtime or other associated supplements to the person), it is necessary to refer, at this point, to the criteria supported by this Authority in previous reports on remuneration (IAI 9/2016, IAI 36/2017 or IAI 40/2017, among others).

It is agreed, in these reports, that the transparency legislation would enable, through the exercise of the right of access, the delivery of these remunerative data regarding the high positions of the corporation because, as we have seen, the article 11.1.b) of the LTC obliges to publish the remuneration (including allowances and per diems) received by these people.

Also that this same criterion can be extended with respect to personnel who occupy positions of trust, of special responsibility within the organization, of free appointment or that entail a high level of remuneration. It is understood that, although in these cases the law does not provide for the publication of their remuneration on the Transparency Portal, with regard to requests for access to this information, it must be taken into account that it is positions that, due to their uniqueness and also due to the level of remuneration they are usually associated with, knowledge of their remuneration may be relevant for the control of the use of public resources. In these cases, it is considered that it would be justified to provide individualized remuneration information about the positions, even identifying the people affected.

On the other hand, for the rest of the staff in which these circumstances do not occur, it is considered that, in principle, given that these are positions with a lower level of responsibility, and consequently with a lower level of remuneration, the evaluation of the use of the public resources can be done by having the information on remuneration grouped by category or according to the different types of workplace and not individualized.

It is warned that the dissemination of 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.

In view of all this, and taking into account the context in which we find ourselves, it can be said that in order to carry out the functions of monitoring the legality in force that the ET (and the TRLEBEP) attributes to the representative bodies of the workers, it does not seem a priori that generalized access, in an individualized way, to the remuneration received by each and every municipal worker is necessary.

However, it cannot be ruled out that at a given moment it may become necessary to have the identification of a specific worker or workers, for example, if there are indications of any irregularity in which the identity of the affected workers may be relevant.

If this were the case, it should be borne in mind that, in accordance with the principle of minimization (Article 5.1.c) RGD, access should be limited to the remuneration information of the worker (or workers) affected, not to that of all City Council workers. This, without prejudice to informing the workers' representative bodies that the data protection regulations will apply to the subsequent processing of said information.

It should also be borne in mind that, in accordance with article 31 of the LTC, the request for access should be forwarded to the affected worker, so that, within 10 days, he can make the delegations that he considers pertinent when his rights or interests are affected.

In any case, it would not seem that this is the case raised in the consultation, given that, as seen, the request only refers to the fact that the retributive information is requested "to have knowledge", without more concreteness about possible irregularities, anomalous situations or references to specific City Council workers.

IV

The "company committee delegate" also requests access to the TC2 documents.

It is worth noting that the document TC-2, contribution slip for the settlement and payment of contributions for the different Social Security schemes, or the Nominal Relation of Workers (RNT) that replaces it with the implementation of the new system of direct settlement of contributions to the Social Security, in addition to containing the nominal relationship of the workers (abbreviation of the first and last names of the workers, DNI and affiliation number to the Social Security), it includes the contribution data (occupation, number of days or hours, key contribution base and the amount of these bases), but also informs about special situations of workers who are entitled to some deduction or compensation.

These deductions and compensations may refer to common illnesses or non-occupational accidents, among other issues. Information that can lead us to know, even indirectly, workers' health data (disability or occupational health situations), that is, data included in what the RGD calls "special categories of data".

Article 9.1 of the RGD establishes:

"The processing of data that reveals ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation is prohibited, and the processing of genetic data, biometric data aimed at unambiguously identifying a natural person, data relating to the health or data relating to the sexual life or sexual orientation of a natural person."

It establishes, in general, the prohibition of treatments that reveal personal data of this type, except in the specific situations provided for in the Regulation itself. Section 2 of article 9 of the RGD lists the circumstances that, if they occur, would allow this treatment, establishing a "numerus clausus" of treatment possibilities.

Article 64.2 c) of the ET recognizes a right to the workers' representative bodies to receive information on the absenteeism rate and the causes, work accidents and occupational diseases or the accident rate, among others. However, the cited article makes it clear that this information must be communicated in the form of statistics, therefore, without identifying specific workers. It follows from this that the communication, with identification of the workers, of this type of information contained in document TC-2, would contravene the provisions of the ET itself.

The LTC, of supplementary application, is also clear regarding access to health data and other data deserving of special protection, by limiting access to this data unless the express consent of those affected in the time of formulating the access request.

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 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 concerned expressly consents to it in writing that must accompany the request."

For its part, article 15.1 of Law 19/2013, of December 9, on transparency, access to public information and good governance, establishes that "(...) if the information includes personal data that has reference to racial origin, health or sexual life, includes genetic or biometric data or contains data relating to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, access may only be authorized if it is with the express consent of the affected person or if that person was protected by a rule with the rank of law."

With regard to the remuneration data contained in the quotation bulletin, it should be borne in mind that articles 8.4 and 64.4 of the ET provide for access by the workers' representatives to the basic copy of the contract, which means that these may have the information of a retributive nature that may be contained in the contract, but that, as we have seen, beyond this, there is no other specific legal provision in this rule that legitimizes the workers' representative bodies to access to the remuneration data of the workers.

On the other hand, it should be borne in mind that, in accordance with the LTC, access to information on remuneration could be carried out in the terms set out in the previous basis of this report, to which we refer.

Beyond that, and in the absence of specific reasons that the workers' representative body can adduce that justify access to the nominal list of workers contained in document TC-2, and bearing in mind that the purpose should to be framed within the functions of monitoring and compliance with the rules in force in the field of labor, social security and employment, it does not seem that access to the remuneration information contained in this quotation bulletin, which we understand, can be justified for this purpose which would in any case be excessive and contrary to the principle of data minimization (article 5.1.c) RGD.

However, the possibility of providing information to the workers' representative body about the nominal list of workers for whom the City Council has contributed should not be ruled out.

considering that the works council must have the basic copy of the contracts (article 64.4 ET), with the first and last names of the workers (article 8.4 ET), access to said information would not imply greater interference on the your privacy

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

The workers' representative bodies must be able to have access to information relating to the remuneration of high-ranking officials in the service of local administration and of people who occupy positions that can be qualified as trust or of special responsibility, while, for the rest of the workers, individualized access does not seem justified beyond the possibility of delivering remuneration information grouped by category or according to the different types of workplace. This, without prejudice to the fact that, in certain cases, it may be justified to access the details of the remuneration of specific workers.

Access to the monthly TC2 document should have the express consent of the workers. This, without prejudice to the fact that a relationship can be provided with the first and last names of the workers for whom the City Council has paid.

Barcelona, 2 October 2019