

CNS 58/2019

Opinion on the query made by a city council in relation to the request for information submitted by the union representatives of the corporation on the staff productivity supplements.

A city council formulates a query in relation to the request for information presented by the union representatives of the corporation about the productivity supplements paid to the staff and the provision of services by the Urban Guard.

In particular, it states that the union representatives of the corporation have requested from the human resources department of the corporation they have requested from the human resources department of the corporation the following information:

" 1.- Document and excel/calc file, with the ratio of productivity paid during the year 2018 and 2019, so that it can be identified without any doubt from whom, how much, for what period and in terms of what they have been charged .

2.- Complete copy of all the signed reports of the daily services of the head of the Urban Guard shift, from 2019, for ordinary, extraordinary and special service, where the staff is listed, without name, but with the TIP number."

In relation to the first request, the City Council states that information was provided by contribution groups and departments, but that the union representatives do not agree and insist on obtaining information on the productivity paid in relation to the place of work held by each of the workers.

In relation to the second request, it is stated that access to said information could compromise the security of the service itself and of the people who perform it. This issue will be analyzed separately in opinion CNS 59/2019.

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

I

(...)

II

The consultation raises doubts about the possibility of providing the union representatives of the corporation with certain remuneration information of the City Council staff.

Article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), defines personal data as "any information relating to an identifiable natural person ("the interested party")", and considers as an identifiable natural person "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, como por ejemplo a number, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person."

The data available to the City Council, which identify and refer directly to workers, as well as other data that may refer more specifically to the workplace they occupy, but which can be associated or can be linked to a specific worker, and which therefore identify you, are personal data and are protected by the principles and guarantees established by the RGPD.

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, in order 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 "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 treatment " (letter e).

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 (hereafter LOPDGDD), the treatment of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

Taking into account that those making the request are the union representatives of the workers, it is 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 (hereinafter, 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 company committee 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 it, in the terms provided for in this article." And he adds that it is understood by information "the

transmission of data by the employer to the works committee, so that it is aware of a specific 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, LTC). This Law 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, a individual title 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 remuneration and labor information that the City Council has on its workers 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).

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 they must apply to the request for information presented the provisions of the ET, and where appropriate of the TRLEBEP, and, additionally, in what is not provided for by these rules, those of the LTC

III

Article 22.3 of Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the basic statute of the public employee (hereafter EBEP), defines the complementary remunerations such as those that “remunerate the characteristics of the places

of work, the professional career or the performance, performance or results achieved by the official."

Pursuant to article 24 of the EBEP, the amount and structure of the complementary remuneration of civil servants must be established by the corresponding laws of each Public Administration, taking into account, among others, the following factors: a) The progression achieved by the official within the administrative career system; b) The special technical difficulty, responsibility, dedication, incompatibility required for the performance of certain jobs or the conditions in which the work is carried out; c) The degree of interest, the initiative or the effort with which the official does his work and the performance or the results obtained id) The extraordinary services provided outside the normal working day.

Article 103 of Legislative Decree 1/1997, of October 31, 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, refers to productivity supplements and gratuities in the following terms:

"1. These are complementary payments:

(...)

c) The productivity supplement, the purpose of which is to reward special performance, extraordinary activity and the interest or initiative with which the official carries out his work.

The overall amount will be set for each program and administrative body through a percentage on total personnel costs, which will be determined by the Budget Law.

The Budget Law will also establish the criteria for the distribution of this supplement. The person responsible for the management of each spending program, within the corresponding budget allocations, will determine, in accordance with the regulations established by the Budget Law, the individual amount that corresponds to each official. The amounts received by each official for this concept will be public knowledge for the other officials of the department or the organization concerned and for the union representatives.

By regulation, each year, in accordance with the Budget Law, the technical evaluation criteria for the factors that determine the distribution will be established, as well as the participation formulas for the representatives of the staff involved.

(...)"

In similar terms, Decree 214/1990, of July 30, is issued, which approves the Staff Regulations for the service of local entities (articles 171 et seq.) and article 5 of Royal Decree 61/1986, of April 25, which establishes the remuneration regime for the officials of the Local Administration.

In accordance with articles 172.4 of Decree 214/1990, it is up to the plenary session of each corporation to determine in the budget the global amount destined for the allocation of the complements of

productivity to civil servants within the maximum limits indicated by article 175.2.b) of this Regulation. And as can be seen from article 172.5 of this same Decree, the distribution of this amount between the different programs or areas and the individual allocation of the productivity supplement corresponds to the mayor or president of the corporation, with subject to the criteria that, if applicable, the plenary has established, without prejudice to the delegations that may be conferred in accordance with Law 8/1987, of April 15, municipal and local regime of Catalonia.

It follows from all of this that the productivity supplement has a markedly personal character, although in accordance with the legal prescriptions, its appreciation must be carried out based on objective circumstances directly related to the development of the workplace and the objectives assigned to it, and their quantification must be adjusted to the criteria approved by the Plenary.

Article 103.1 c) of Legislative Decree 1/1997, and in the same sense articles 172.3 of Decree 214/1990, and 5 of Royal Decree 61/1986, expressly provide that the amounts received by each official are knowledge public for the rest of the corporation's officials, and for the union representatives.

From the point of view of the affected workers, it is true that the disclosure of information on the perceived productivity supplement could facilitate the obtaining of an economic profile on the affected people, especially considering that the rest of the supplements associated not with the worker but in the workplace (destination and specific supplement), are part of the LRT, which means that anyone can access in a relatively easy way the amounts assigned to the respective workplaces to these two concepts (destination supplement and specific), either through the RLT itself or by 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.

But in the case of the productivity supplement, the legislator makes the interest in obtaining said information prevail over the right to privacy of the affected workers, and these people must have the possibility that the union representatives know the amounts that may have perceived for this concept.

For all that, the data protection regulations would not oppose giving the union representatives the information on the amounts received for the productivity supplement during the years 2018 and 2019 by each of the municipal workers, in the form requested.

Be warned, however, that although it is expressly requested to know who has collected the various amounts, in the particular case of the integral staff of the local police, it is necessary to take into account the sectoral regulations applicable to the security forces, which provides that s 'identify with a professional identity card (TIP) in place of the first and last name, for security reasons. Law 4/2003, of April 7, on the organization of the public security system of Catalonia, provides in article 25 that "a professional accreditation document. " (...) "This document must include, at least, the municipality of affiliation, the identification of the professional category and the individual registration number. (...)

Considering that the identification of the local police is done through the TIP number, the information should be provided using this identification code instead of the first and last name. This measure, less intrusive in the privacy of the people affected, would be more appropriate to the principle of data minimization. It is obvious that the TIP identifies, or makes the holder identifiable, especially in this case where the information is accessed by employees of the City Council itself, but to the extent that this is the identification mechanism provided for by the regulations for security reasons, it should also be in this case the form of identification chosen to provide the information.

conclusion

The data protection regulations would not prevent the access of the workers' representatives to the amounts paid by the City Council as a productivity supplement, with an indication of who, how much, for what period and for what they have been charged. In the case of members of the Urban Guard, they must be identified by means of the identification number (TIP).

Barcelona, January 27, 2020