

Ref. : IAI 32/2019

Claim: 301/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim presented by a citizen against a Decentralized Municipal Entity for the denial of access to the selection file of a worker, and certain information about the tasks performed.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on claim 301/2019 presented by a citizen against a Decentralized Municipal Entity by the denial of access to a worker's selection file, and certain information about the tasks performed.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the report of the Legal Counsel, I issue the following report:

Background

1. On March 29, 2019, a citizen submitted a letter to the Decentralized Municipal Entity (hereafter EMD) requesting:

First.- That he be provided with a copy of the selection file of a person identified with the ID number to fill a temporary position of watchman/brigade.

Second.- To be informed if the appointed person meets the general qualification requirements and the rest of the conditions required to participate in the access tests to the bodies or official ladders corresponding to the watchman/brigade position that this person would be occupying .

Third.- That the list of tasks assigned to this person during the last two months be provided, and more specifically how many hours of the working day have been allocated to surveillance tasks and how many to brigade tasks.

2. On May 14, 2019, the interested person filed a claim with the GAIP against the EMD (...) for the lack of response to the request for access to the information submitted.

3. On May 24, 2019, the complained entity issues a report in which it makes clear that the claimant is not a person interested in the selection procedure to which access is requested and considers for this reason that he has no right to access It is also reported that in relation to this file, an administrative appeal filed by a person interested in the procedure is pending.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must issue a report to the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected. Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

II

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), extends its scope of protection to personal data understood as all information about an identified or identifiable natural person, and considers 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, social identity of the said person, or a social identity of the RGPD).

Article 4.2) of the RGPD considers "treatment": any operation or set of operations carried out on personal data or sets of personal data, either by procedures

automated 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, comparison or interconnection, limitation, deletion or destruction. "

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

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 (LOPDGDD), the processing 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.

At the same time, article 86 of the 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 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 29 December 2014, on transparency, access to information and good governance, aims to regulate and guarantee the transparency of public activity.

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 second additional provision of the LOPDGDD establishes that "Active advertising and access to public information are regulated by Title I of Law 19/2013, of December 9, on transparency, access to public information and good governance , as well as the active advertising obligations established by regional legislation, will be subject, when the information contains personal data, to the provisions of articles 5.3 and 15 of Law 19/2013, in Regulation (EU) 2016/679 and in this organic law."

Article 18 of Law 19/2014 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 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".

The object of this claim is access to information related to the selection process and the tasks carried out by a public worker, information that 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, the right of access to public information (article 18 LTC) can be denied or restricted for the reasons expressly established in the laws. Specifically, with regard to information that contains personal data, it is necessary to assess whether or not the right to data protection of the affected persons would justify the limitation of the right of access to public information invoked by the applicant.

III

With regard to the access to the selection file that is claimed and given that no information is available on its specific content, an assessment will be made of the set of documents that generally tend to integrate this type of procedures

In this sense, it is foreseeable that it will contain, among others, the applicants' requests for participation, the lists of applicants admitted and excluded from the selection process, any tests carried out, the documents that the participants may have presented, the minutes of the corresponding qualifying tribunal, which include the evaluations of the alleged merits, of the interview carried out, etc., the result of the process, the appointment proposal and the resolution or hiring agreement of the finally selected candidate. Therefore, we will start from the fact that there may be numerous information relating to the people participating in the process, in addition to the data of the public employees responsible for its processing and resolution.

With regard to the information on employees or public positions that may be included in the file, article 24.1 of law 19/2014 provides that "1. Access to public information must be given if it is 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 it has to prevail over the protection of personal data or other constitutionally protected rights".

In this case, the identification data (name and surname and position) of the employee or public official who have intervened in the exercise of their functions in the selection procedure, as well as those of the qualified official who could eventually be in charge, would be included to deliver copies of the documentation to the applicant.

Regarding the personal information about the participants in the selection process deserving of special protection, and in accordance with article 23 of the LTC "Requests for access to public information must be refused if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request".

It cannot be ruled out that the file contains information and/or documentation related to the applicants' health, either because it was provided by the participants in the process (for example to access to the file).

some disability), either as a result of any of the tests carried out (for example, if applicable, physical tests or which involve an assessment of aspects of personality).

In any case, if the documents in the file include information deserving of special protection under the terms provided for in article 23 LTC, it will be necessary to preserve their confidentiality and limit access, unless with the sole request that the express consent of the affected persons had been provided, which is not recorded.

Access to the rest of the personal data of the participants requires a prior weighting between the different rights and interests at stake pursuant to article 24.2 LTC:

"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 disclosure and the rights of the people affected. 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."

According to the City Council's report, the claimant is not an interested party in the procedure, which is why he considers that he has no right to access it.

The person making the claim does not specify any specific reason why he is interested in obtaining access to the file, a fact that, despite not being enforceable (article 18.2 LTC), could be relevant for the purposes of making a correct weighting, as in fact provides for article 24.2.b) LTC.

All in all, the purpose of the Transparency Law is to establish a system of relations between people and the public administration and other obliged subjects, based on knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of accountability and responsibility in public management (article 1.2 LTC). It is in this context that it is necessary to assess whether or not access to the personal information of the participants in the selection process would be justified.

The legal limitations on the right of access to public information must be applied in accordance with their purpose, taking into account the circumstances of each specific case, they must always be interpreted restrictively in favor of this right and not they can be extended by analogy (art. 20.2 LTC)

Personnel selection procedures are competitive procedures, based on the principles of equality, merit and ability, transparency and publicity.

In this sense, the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (EBEP) (applicable as established by article 2.1.c) to the official staff and, where appropriate, to the labor staff of the Local Entities), establishes these principles in article 55, where it is foreseen that: "1. All citizens

they have the right to access public employment in accordance with the constitutional principles of equality, merit and capacity, and in accordance with the provisions of this Statute and the rest of the legal system."

Also Law 7/1985, of April 2, regulating the Basics of the Local Regime, provides in the article "The which agrees to the offer of employment by the public, by means of a public call and through the system of contest, opposition or free opposition contest in which the constitutional principles of equality, merit and capacity are guaranteed, in any case, as well as that of publicity."

For its part, the Municipal and Local Regime Law of Catalonia establishes in article 285 that "local corporations must publicly formulate their employment offers".

Decree 214/1990, of July 30, which approves the personnel regulations in the service of local entities, regulates, under the principle of publicity, the personnel selection procedure, and provides in article 94, on the basis of which the City Council would have processed the procedure subject to the claim, as stated by the claimant in the access request, which:

"-1 Interim staff and non-permanent temporary labor staff are selected through a public call and the competition system, except in cases of utmost urgency.

-2 For the purposes of paragraph 1, the local body can call a single annual competition, where the order of preference must be established to fill the vacancies that occur during the year.

-3 In the case of utmost urgency, the appointment of interim staff and the hiring of temporary labor staff must be published in the Official Bulletin of the province and the Official Journal of the Generalitat of Catalonia, and notice must be given in plenary in the first session it has.

-4 Interim staff must, in any case, meet the general qualification requirements and the other conditions required to participate in the access tests to the corresponding bodies or levels as career civil servants."

In this context, and for the purposes of transparency, the claimant should be able to have the necessary information that allows him to verify that the procedure to fill the specific job requested has been processed with full respect for the guiding principles of this types of procedures.

Article 9.1.e) of the LTC establishes that they must be published (on the transparency portal or the corresponding electronic headquarters "The calls and the results of the selective processes for the provision and promotion of personnel" without making any kind of distinction.

Given these provisions, there should not be any inconvenience from the point of view of the right to data protection, in providing information on the identity (name and surname) of the appointed or contracted person.

It is worth saying that although the claimant identifies the selected person with his number. of ID, it is likely that the identity is already known by this person, given the statements made in the application in relation to the request for information on the tasks performed by this person, which will be analyzed in the following legal basis, and the manifestations of

the City Council in the report issued in response to this claim and others that appear to have been presented by the claimant and his partner (person interested in having participated in the selection process).

The claimant expressly requests that the City Council inform him if this person meets the general qualification requirements and the other conditions required to participate in the access tests to the corresponding bodies or ladders as career civil servants, in this specific case those who are required to occupy the position of watchman/brigade that this person would be occupying and that the same claimant describes in the application.

Taking into account that these requirements for participation appear in the call and that this is public, the personal information referred to the selected candidate regarding the fulfillment of these requirements follows from the call itself, so there should be no inconvenience in which the City Council confirms to the claimant that the selected candidate meets the qualification and other requirements required in the call.

For the purposes of transparency, it could also be relevant to know the score obtained in relation to the merits provided for in the call, as well as, if applicable, that of the tests that have been carried out, the evaluation of which has justified that it is this person who has finally been selected to occupy a specific job.

Access to the score obtained by the chosen person in relation to the merits (professional experience, academic training) or in relation to the tests carried out, in case they have been carried out, gives sufficient information in order to evaluate the suitability of the candidate selected by the body in charge of the selection, which should act within the parameters of technical discretion recognized. However, it would not be relevant to facilitate access to the documentation certifying these merits or access to the specific content of the tests carried out (interviews, psychotechnical tests, exams, etc.).

With regard to the information on the rest of the participants, and given that the request refers to the appointment file of the selected worker, it does not seem that it can be justified to obtain information about these people that could appear in the file subject to the claim, so that access should be limited.

IV

The claimant also requests information on the list of tasks assigned to the watchman/brigade during the last two months, and more specifically, asks about how many hours of the working day have been allocated to surveillance tasks and how many hours have been allocated to tasks of brigade. He bases his request on the fact that during this period he himself has been able to verify that the hired person has been investing a large part of his working day in works carried out in a specific building.

Like any other public workplace, workplace relations establish their essential characteristics and the requirements for their development. In this case, it is not known what the specific tasks are associated with the position of watchman/brigade, but it is obvious that these tasks include monitoring and the work brigade service, which

of this workplace. In this sense, there should be no inconvenience in providing the claimant with the description of tasks related to the job.

The claimant, however, requests access to the list of specific tasks entrusted to this person during the last two months. This information goes far beyond knowing the general functions performed by the person occupying a specific job.

In fact, what the claimant seems to be questioning is not that tasks other than those of the workplace are being assigned, but that one of the functions (surveillance) that would partly justify the position of work and staff recruitment. From this perspective, it could be relevant for the purposes of making an assessment on the management of human resources by the City Council, whether or not surveillance tasks have been carried out, or the number of hours as a whole employed in or other tasks, and the data protection regulations do not seem to be able to oppose the claimant's right to obtain said information.

CONCLUSION

The data protection regulations would not prevent access to the merely identifying data of the positions or public employees that in the exercise of their functions may appear in the different requested documentation, nor to the information about the identity of the person selected in the selection process object of complaint, the qualification and other requirements that this person has, and/or the score obtained as a result of the merits and tests carried out. On the other hand, access to the candidate's evaluation report or to the personal information of the other people who may have participated in this selection process would not be justified.

With regard to access to the tasks entrusted to the contracted worker, there would be no inconvenience in providing the claimant with the list of tasks that correspond to the specific workplace, and the number of hours allocated to the surveillance service and the service of brigade

Barcelona, July 5, 2019