

Ref. AJ : IAI 51/2019

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against a public sector entity, for the denial of access to certain information about the remuneration of the director of this entity.

The Guarantee Commission for the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim (...) against a public sector entity, for the denial of access to certain information about the remuneration of its director.

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 November 29, 2019, a citizen submitted a claim to the GAIP against the decision of a public sector entity for the partial rejection of a request for access to information related to the remuneration of the director of this us

Specifically, he explains that "at the time he requested the (...) director's remuneration (...) between 2005 and 2019, both inclusive. Monthly remuneration collected, specifying the concepts thereof. In other words, PAYMENTS MADE MONTHLY, also including per diems, extraordinary items, salary, compensations... Likewise, to know if during this period of time any discount has been applied to the payroll and of what type (penalties, embargoes. ..)".

He states that his request has been partially estimated, "but it has not been specified whether the salaries correspond to the actual payments made nor is there an answer to whether during this period any discount has been applied to the payroll and from which type."

He justifies his request in the right of access to information for the control of public power, and claims that since they are high-level political positions, their remuneration is already known officially. It shows its dissatisfaction with the fact that the entity does not justify the reasons why all the information is not provided.

Accompany the claim with the initial request for access submitted to the entity, as well as the entity's communication of November 28, 2019, in which you are informed that the director of the entity has resolved partially estimate the request and declares the interested party's right to obtain information on the Director's remuneration during the indicated period.

2. On December 5, 2019, the GAIP requested the entity to issue a report in relation to the present claim, which is not included in the file.

3. On December 10, 2019, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

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 request a report from the Catalan Data Protection Authority, which must be issued within fifteen days.

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.

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), applicable from May 25, 2018 (article 99), 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).

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

Article 5.1.a) of the RGPD establishes that all processing of personal data (Article 4.2)) must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency).

In this sense, article 6 of the RGPD establishes that there must be a legal basis that legitimizes the treatment, either the consent of the affected person (section 1.a)), or any of the other legitimizing bases that it provides, for example, that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (section 1.c)).

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 this legal basis of article 6.1.c) of the RGPD when this is established by a rule with the rank of law.

For its part, 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, organism or entity in accordance with the Law of the Union or 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, on transparency, access to public information and good governance (hereafter, LTC), aims to regulate and guarantee the transparency of public activity.

According to article 18 of Law 19/2014 "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any person legally constituted legal entity" (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 information of the entity's staff - subject to transparency legislation (art.3.1.b) LTC- is public for the purposes of article 2.b) of the LTC and, therefore, remains subject to the law of access (art. 18 of the LTC). This right, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws.

Specifically, and with regard to the protection of personal data, it is necessary to assess the nature of the personal data that would be affected by the access and determine whether the right to data protection of the person(s) affected can justify or not a limitation, in accordance with the criteria provided for in articles 23 and 24 of the LTC and the regulatory principles of the personal data protection regulations.

III

The purpose of the access is, as can be seen from the claimant's statements, to know the monthly payments made to the director of the entity including any item ("allowances, wages, compensation or extraordinary items ..."), during the years 2005 to 2019, both included.

At the same time, he asks to know if during this period of time any discount has been applied to the payroll and of what type (penalty, embargo, etc.).

In general and from the perspective of the right to the protection of personal data, information on the remuneration of a position or job makes it possible to draw up an economic profile of the person who occupies it, both in the field professional as well as in the social and economic sphere, and this either directly, facilitating the identification of the person who occupies the specific position, or indirectly, when it comes to positions that can be related, by other means and without disproportionate efforts, with the people who occupy them.

In principle, the information on the monthly amounts paid to the director of the entity for the different concepts, would not affect specially protected data (in the terms provided for in article 23 of the LTC), and therefore, access requires make a weighting between the public interest in the disclosure of information and the rights of the affected person/s, provided for 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. (...)."

As can be seen from the file, the resolution of the claimed body was partially estimative, given that it recognized the right of access to the remuneration corresponding to the requested period. The content of this resolution is not available, but from the statements of the interested party in the claim, it seems that what would have been delivered would be the amounts corresponding strictly to remuneration corresponding to the position of director of the service during the years requested (2

The Law obliges public administrations - including, among others, the entities of article 3.1.b) of the LTC - to publish "the remuneration, compensations and per diems, the activities and assets of the members of the Government, of senior positions in the Public Administration and the management staff of public bodies, companies, foundations and consortia, and the compensation they must receive when they cease to exercise their position." (art. 11.1.b) LTC).

There is no specific provision in the transparency legislation of what is to be understood by "managerial staff", but taking into account what is established in additional provision 21^a of Law 2/2014, of January 27, on fiscal, administrative, financial measures and of the public sector, this active advertising obligation would affect the remuneration received by "people who occupy positions or positions expressly qualified as managers in the rules for the creation or regulation of entities

in accordance with the exercise of functions of special managerial responsibility, understood as functions that involve the sole or main dedication of the day, direct participation in the definition and execution of public policies, as long as they involve the organization externally, lead teams of people, manage and execute budgets and have responsibility for the fulfillment of objectives" (section 1.2).

In accordance with article 6 of the Decree approving its Statutes, the director is the executive body of the entity and is responsible for leading and representing it. He is appointed by the Government, at the proposal of the Environment Minister. On the other hand, in its electronic headquarters, the director is identified as a high-ranking official.

Therefore, it seems clear that we are dealing with a body, the director, who must qualify as a manager or high official.

Taking this into account, the claimed entity would be obliged to publish the information on the remuneration received by its director, individually on their website or electronic headquarters and should include the full amount for any type of remuneration, compensation or allowance.

The request for access, however, goes further, given that, on the one hand, information is not requested on the remuneration of the current director, but rather those corresponding to the period 2005-2019.

With regard to the temporal scope of the information, point out that the transparency legislation does not subject the right of access to public information to any type of temporal limitation, so that information that refers to previous years and that is relevant for the purposes of achieving the objective of transparency pursued, it must be accessible to the public, as long as it is in the power of the obliged subject and no limitations set forth in the laws must prevail.

The claimant justifies the right of access by referring to the purposes of monitoring the political power, without specifying, however, any specific reason why he is interested in obtaining the information in the requested terms.

Even so, the control of the use that the administration can make of all types of emoluments linked to people who hold positions with a high level of responsibility and also high levels of remuneration, is relevant for purposes that citizens can form- is a critical opinion and assess its efficiency in the management of public resources, and this has been recognized by the same Law in providing for its disclosure through the transparency portal.

The fact of knowing what were the remunerations received by the person or persons who held the position of director in previous financial years and being able to compare them with those that may have been recognized in the current financial year may be relevant for the citizen in relation to the control over the efficiency of public resources.

The same entity recognizes the right to obtain information on remuneration throughout the requested period, despite the fact that they only refer to "remuneration" (base salary and supplements) and not to those received in the form of allowances or allowances. These would include the amounts that may have been credited as financial compensation to meet maintenance and accommodation expenses derived from the exercise of functions inherent to the position (per diems), or any other emolument received due to the provision of services to the administration or public sector entities (compensation). There are no reasons that can justify access to one type of information (the strictly retributive) and not the other, and without having all the information it becomes difficult to assess the

labor costs borne by the entity in relation to the exercise of the position of the most responsible throughout these years.

From the perspective of the right to data protection of the manager(s) affected, it does not seem that the passage of time is a criterion that should restrict the right of access, even if this/he/she is no longer in or are currently part of. In principle, the attachment to the right to data protection should be less than the knowledge of the current remuneration, and the passage of time is precisely one of the circumstances to be taken into account when weighing, according with article 24.2.b) of the LTC.

For all that, the claimant's right of access would justify facilitating information on any emoluments received by the people who have held the position of director of the entity.

This information should include the annual gross remuneration received by all concepts, as well as any per diem or compensation received, from 2005 to 2019 inclusive, on an individual basis.

IV

The request for access to public information does not only ask for the remuneration received, but also requests "to know if during this period of time any discount has been applied to the payroll and of what type (penalties, embargoes ...)."

The answer to this question must necessarily be different. The main purpose of the legislation on transparency of the public sector is to allow citizens control over administrative action, in particular, and focusing on the case at hand, everything that has to do with the use of public resources .

For the purpose of assessing the labor costs borne by the entity in terms of public expenditure, what is relevant is to know what are the remunerations, per diems or compensations generated by the public office in full or gross. The information on the liquid received, once the deductions have been made in the IRPF, contributions to the SS or any other that may have been made as a result of embargoes or penalties referred to by the claimant, is irrelevant for purposes of transparency and efficiency control in the management of public resources.

It should be borne in mind that the information requested at this point may include information with a special sensitivity, or even that is part of the special categories of data.

Providing information on possible embargoes produced as a result of court orders or public administrations would imply an intrusion into the privacy of the affected person closely linked to their personal life and which would not be justified in order to fulfill the objective of transparency pursued. Access to information on possible financial penalties (we understand that you are referring to financial sanctions) imposed on the affected person would, in addition, mean providing information related to the commission of administrative or disciplinary infractions, and would run into the limitation provided for in article 23 of the LTC.

But even so, as far as it refers in general to any "discount" there could even be a discount linked to a possible union membership, in the event that the affected person himself had given instructions in this regard .

The principle of data minimization requires that the data processed are adequate, relevant and limited to what is necessary to fulfill the intended purpose. (Article 5.1.c) of the RGPD)). For this reason, it does not seem that the right to obtain information on the destination of public resources can also include the right to obtain information on aspects of the personal lives of the affected persons that have nothing to do with the activity of the administration.

For all that, it is considered that although the data protection regulations would not oppose the claimant's access to the information on the amounts received for any concept by the person or persons who during the indicated period have held the position of director of the entity, this information should refer to the gross amounts generated by the exercise of public office.

CONCLUSION

The data protection regulations do not prevent the claimant's access to the gross annual remuneration received, accrued or expected, for all items, as well as any per diem or compensation received by the director/s of the entity from year 2005 to 2019 inclusive, individually. On the other hand, it would not be justified to provide information on possible embargoes or penalties applied to these remunerations, per diems or compensations.

Barcelona, December 20, 2019