

Ref.: IAI 53/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information on the claim presented by a representative of the official staff against the refusal by a city council of the request for access to the entry and exit registrations of the staff of the local police

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 the claim presented in relation to the city council's denial of the request for access made by the official staff delegate to the entry and exit registrations of the local police force.

Having analyzed the request, which is accompanied by a copy of the file of the claim submitted, having seen the report of the Legal Adviser, I issue the following report:

Background

1. On October 11, 2018, an official of the Local Police of a town hall presents a letter to that town hall, in his capacity as a delegate of the town hall staff and representative of the Local Police Union-Cos Mossos d'Esquadra (SPL-CME), through which he requests the entry and exit records of all the Local Police staff from January to September 2018.
2. On February 18, 2019, due to the lack of response from the city council, the delegate of official personnel, presents a new letter in which he again requests the information regarding the entry and exit signings of the entire Local Police staff from January to September 2018.
3. On October 28, 2019, the interested party filed a claim against the city council before the GAIP.
4. On November 7, 2019, the GAIP requested a report from the city council in relation to the claim presented.
5. On December 13, 2019, the GAIP sent this Authority the file relating to the claim and requested a report 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 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 contained in the requested information is outside the scope of this report, as would be the case with the limits established in article 21 of Law 19/ 2014, of December 29, on transparency, access to public information and good governance.

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), 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; ".

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 making the claim, 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 legitimizing the processing of data which 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 the 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 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 December 29, on transparency, access to public information and good governance (LTC hereinafter) aims, among others, to "regulate and guarantee people's right of access 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".

The information that is the subject of the claim submitted by a city council official is "public information" for the purposes of the LTC and remains subject to the access regime provided for in these regulations.

In this context, it is necessary to analyze whether, through the exercise of the right of access to public information recognized in the transparency legislation, there would be legal authorization to access said in

III

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 that contains personal data, it is necessary to assess, in application of the regime provided for in articles 23 and 24 of the LTC, whether or not the right to data protection of the affected persons would justify the limitation of the right of access to the information subject of the request.

Information relating to staff time records is not considered specially protected data under the terms of article 23 of the LTC. Therefore, article 24.2 of the LTC will have to be applied, 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.

3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the data protection legislation staff."

Thus, access to the personal information requested goes through a prior reasoned weighting between the public interest in disclosure and the right of the affected persons, which, in this case, would be the entire staff of the Local Police.

Before that, however, it must be taken into account that the staff requesting access is doing so in the capacity of union delegate of civil servants and representative of the Union (SPL-CME). This question is relevant, given that the boards or staff delegates (art. 39 of the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of public employee, hereinafter 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.

In addition, Organic Law 11/1985, of August 2, on Trade Union Freedom establishes that trade union representatives "in the event that they are not part of the company committee, they will have the same guarantees as those legally established for the members of the company committees or the representative bodies that are established in the Public Administrations "as well as a "Have access to the same information and documentation that the company makes available to the

company committee, the trade union delegates being obliged to keep professional secrecy in those matters in which they legally proceed" (article 10.3).

With regard to the representatives of civil servants, article 40.1.a) of the EBEP, provides that the Personnel Boards and the Personnel Delegates must receive information on the personnel policy, as well as the data relating to the evolution of remuneration, likely evolution of employment in the corresponding field, and on performance improvement programs.

In the case of labor personnel, article 64 of the ET recognizes the right of the works committee 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. In addition, and for the case at hand, the amendment introduced to article 34 of the ET by Royal Decree-Law 8/2019, of March 8, recognizes the workers' representatives the possibility of accessing the daily records of the workers' day, when it establishes that:

"9. The company will guarantee the daily work register, which must include the specific start and end time of each worker's working day, without prejudice to the flexible hours established in this article.

Through collective bargaining or company agreement or, failing that, the employer's decision prior to consultation with the legal representatives of the workers in the company, this day record will be organized and documented.

The company will keep the records referred to in this provision for four years and they will remain at the disposal of the workers, their legal representatives and the Labor and Social Security Inspectorate."

Therefore, in accordance with these provisions, the representatives of the workers subject to the ET can have access to the daily record of the working day of each working person, and this access would also include the identity of the affected workers.

It should be noted, however, that there is no provision in the EBEP equivalent to the regulation contained in the ET. Likewise, as a result of the entry into force regime provided for in the sixth final provision of Royal Decree-Law 8/2019 (which does not provide for any type of retroactivity), the measure is applicable only to the data of the records made from of May 12, 2019, which is the date it entered into force.

In the case before us, the applicant claims to act as a representative of the civil servants. Consequently, there would be no specific qualification in the civil service regulations that would allow him to access the identification data of the officials of the Local Police staff contained in the requested information.

IV

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 what is the purpose he pursues and, in short, the reasons for which he is interested in knowing the information, adds a very important element to take into account, since the purpose, in accordance with article 24.2 b) LTC, is one of the weighting elements between the public interest in disclosure of the information and the

The person making the claim makes it clear that he is requesting the information in his capacity as a representative of the official staff as a result of the fact that different members of the staff have expressed suspicions of favoritism in terms of schedules and permits for certain people members of the Local Police staff, specifically states that "(...)some colleagues have a preferential treatment compared to the rest, since they enjoy more permits and have a different schedule than the one assigned by quadrant, since they come in more late or finish before the work shift according to what days and shifts (...) the delegate is aware that there are internal agreements and communications between some workers in the workforce and the Chief of the Local Police, in reference to permits and modification of the schedule of the beginning and end of the working day, everything and that it harms the ordinary service(...)".

In this case, the purpose of the access would be justified in a control of the municipal action in the assignment of schedules to certain members of the staff and in the granting of permits, coinciding with the purpose of the transparency legislation that has for the purpose of "establishing a system of relations between people and the public administration and the other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of retention of accounts and responsibility in public management" (Article 1.2 LTC).

First of all, it must be noted that, if, according to what is set out in the request, what you want to do is control the allocation of permissions to the staff, it would be less intrusive for the privacy of the affected persons to request the permits granted during the period that you want to know, since the list of time records does not provide information about the permits and entails a greater sacrifice for privacy, which is not justified to achieve the purpose pursued.

It should be remembered that in accordance with article 5.1.b) of the RGPD "data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (minimization of data)".

It should also be remembered that in a case like the one we are dealing with, the purpose of the transparency regulations is not to control workers, but to control municipal action.

In any case, in the complaint submitted, the markings of the entire local police force are requested, with the aim of also monitoring compliance with the schedule to verify the actions of the local administration and compliance with the regulations in this matter. For this purpose, obtaining information on compliance with the established schedules could be justified, although this purpose could also be achieved, without sacrificing the privacy of the people affected, by anonymizing the information.

We rule out in this case the pseudonymization of the information, that is to say "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears separately and is subject to technical measures y organizativas destined to guarantee that the personal data are not attributed to an identified or identifiable natural person; (article 4.5 RGPD), since given the small number of employees of the Municipal Police (19 people, according to the information published on the electronic headquarters of the town hall), and the ease of access to specific aspects of the time complia

on the part of any specific worker, there is a high risk of re-identification of the affected persons through additional information that may be in the possession of the requesting person.

Thus, for example, in the case of facilitating the permits granted by assigning a code to the beneficiary persons, a re-identification could be done simply with the prior knowledge of the absence due to permission of one of these persons, a circumstance that would allow to identify- the same in the rest of the permits.

In the case of the records of the working day, there is the possibility of re-identification of the affected persons based on the monitoring of the specific times of entry and exit of certain persons on a given day and their intersection with the information requested on other days

For all the above, it is considered that the purpose of monitoring the actions of the administration in the case at hand can also be achieved without sacrificing the privacy of the municipal police workers, in accordance with the principle of minimization of data. Consequently, in order to find the right balance between the right to the protection of personal data of the affected workers and the right of access to public information of the applicant, it is necessary to facilitate the control records of the workers' working hours in an anonymized manner.

Conclusions

In accordance with the data protection regulations, the time control records of the staff of the Local Police can be communicated to the person making the claim as long as this information is provided in an anonymized manner.

Barcelona, December 20, 2019