

IAI 54/2019

Report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim presented against a local administration for the denial of access to information about people who have received a certain retributive supplement upon being removed or terminated from office

The Commission for the Guarantee of the Right to Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the complaint filed against a local administration for the denial of access to information on people who, since 2000, have received a certain remuneration supplement as a result of having been removed or terminated from office.

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 July 30, 2019, a request for access to the following information is presented to (...):

"Salaries and salary supplements awarded by decree to some employees of (...) once they leave or were leaving their position (even though they can and could continue working for (...) assuming other responsibilities) since the year 2000 until the present day or until the moment when they were stopped or have ceased to be awarded. Specifically, I would like to know:

- Name and surname of these employees.
- Positions they held and for which they later received the salary or supplement salary
- Annual salary of these employees while they assumed this position.
- Date of assumption of the position that they would later leave or from which they would be terminated.
- Year of abandonment or termination of the aforementioned position.
- Amount of this salary or salary supplement for leaving the awarded post by decree
- Date on which these employees received the salary awarded by decree in relation with the abandonment of the position.
- Information on whether they continued working at (...) or not (assuming other responsibilities) after leaving this position, and if so, the task or job they carried out from then on."

It is requested to receive the mentioned information by email in Excel or csv format.

2. On September 20, 2019, the Coordination Support Services Directorate of the Presidency Area of (...) sent an email to the applicant informing him that "(. ..) the information is being sought and elaborated. Due to the volume and complexity of the requested information, we do not currently have it. As soon as we have evidence, we will send it to you through this email."

3. On September 26, 2019, the local administration, by means of a letter from the Directorate of Human Resources Services, responded to the request for information in the following terms:

"(...) in application of what is determined by articles 28 and 29 of the LTAIPBG, I inform you that we cannot admit your request in the terms it is formulated and for this reason we file it pending 'greater concreteness in its terms. (...)'".

4. On October 3, 2019, the applicant submits a claim to the GAIP against (...) for not having delivered the information and requests the mediation procedure provided for in article 42 of Law 19/2014, of December 29, on transparency, access to public information and good governance.

5. On November 26, 2019, the first mediation session will be held, in which, once the object of the access request by the person making the claim has been detailed, (...) will be delivered - him the requested information identifying those people who are considered senior officials and management staff of the entity.

6. On December 13, 2019, the second mediation session was held, during which the decrees of June 28, 2000, April 20, 2004 and February 14, 2008 were delivered to the person claiming, relating to a temporary personal supplement applicable to cases of termination or removal from the workplace, except in cases where these occur due to a voluntary request for termination, if the termination or removal is the result of a disciplinary case or of insufficient performance that does not entail inhibition, as well as the plenary agreement of April 28, 2012 by which the ex officio review and the declaration of nullity of the decrees of 2004 and 2008 are agreed.

The claimant is also given a table in Excel format in which a list of the information they request is proposed, in which the people who have received the reference salary supplement would be identified as long as they have a level of 28 or higher.

The claimant, however, maintains his interest in obtaining the identity of the group of people who have received the salary supplement.

7. On December 16, 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 governance, in relation, specifically, to the following issues:

- Whether access to all the names of the people who received the reference salary supplements may be subject to the limitations provided for by the data protection regulations.**
- Whether it is possible to facilitate access to the identity of a person who is already dead and who received the salary supplement in question, as well as whether it is necessary to transfer the claim to the heirs.**

8. On January 9, 2019, the GAIP sent this Authority, among other complementary documentation, the report issued by the Data Protection Delegate of the local administration on the request for access to information reference public

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.

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" (article 4.1)).

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

As can be seen from the antecedents of this report, the claimant submitted an instance to (...) requesting access to the information relating to the salary supplements recognized by decree (from the year 2000 to the present or until the moment they have stopped

recognize) to some workers when they cease or leave their position. Specifically, he requested to know:

- First and last name.
- Position they held and for which they later received the salary supplement.
- Date of assumption of said position.
- Year of abandonment or termination of the aforementioned position.
- Date on which they received the salary supplement awarded by decree.
- Amount of this salary supplement.
- Annual salary of these employees while they assumed the position.
- Information on whether these employees continued to work in the local administration (assuming other responsibilities) or not once removed or terminated from their position, and if so, the task or work they perform.

During the processing of this claim file, two mediation sessions were held, of which the respective minutes (unsigned) are attached, as a result of which:

- The claimant has specified the object of his claim by obtaining a list of the persons to whom the remuneration supplement recognized by the decrees of June 28, 2000, April 20, 2004 and February 14, 2008, relating to a temporary personal supplement applicable to cases of termination or removal from the workplace, except in cases where these occur due to a voluntary request for termination, if the termination or removal is a consequence of 'a disciplinary file or insufficient performance that does not involve inhibition.
- The aforementioned decrees have been handed over to the claimant, as well as the plenary agreement of April 28, 2012, which agreed to the ex officio review and declaration of nullity of the 2004 and 2008 decrees, in accordance with the favorable opinion of the Legal Advisory Committee of the Generalitat of Catalonia of February 23, 2012, which is transcribed verbatim in the body of the plenary agreement.
- With regard to access to the requested information relating to the reference salary supplement, (...) this information would be delivered identifying only workers who occupy at least level 28, while the claimant would maintain his interest in obtaining the identity of all the people who have perceived him.

Given this, the GAIP requests a specific pronouncement regarding the possibility that access to all the names of the people who received said salary supplement is subject to the limitations provided for by the data protection regulations.

It also requests the opinion of this Authority on the possibility of facilitating access to the identity of a deceased person who received the salary supplement in question, as well as on the need to transfer the claim to the heirs.

III

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

automated procedures 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 .”

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides 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".

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.c) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment.

The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 EC), as recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

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.

Article 18 of the LTC recognizes the right of people 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 entity" (section 1).

Article 2.b) of the LTC 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 that supplied by the other obliged subjects in accordance with the provisions of this law".

The information with respect to which access is requested (list of persons to whom the remuneration supplement applicable to certain cases of termination or removal from the workplace has been paid) is "public information" for the purposes of LTC and would remain subject to the access regime provided for in this regulation.

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, it must be borne in mind, at the outset, that the LTC itself imposes on the obliged subjects certain duties of active advertising in relation to the publication of the remuneration of certain jobs. To the extent that this information must be public, it is clear that citizens must also be able to access it when they request it.

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

"b) The remunerations, compensations and allowances, the activities and assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of the public bodies, societies, foundations and consortia, and the compensations that have to be perceived when ceasing to exercise the position. (...) 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 portal of (...) 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 I

As for the rest of the workers, the information on remuneration must be published in an aggregated manner, that is to say, associated with the jobs of (...) grouped according to the levels and 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 person making the claim under these terms.

In fact, it is stated in the file (minutes of the first mediation session) that (...) sees no problem in giving him the requested information about the salary supplement with identification of the people who have received it during the period between the 2000s

and 2012 (the year in which the decrees recognizing such a supplement were left without effect) regarding the entity's senior positions and management staff.

It should be noted, at this point, that, in the present case, the remuneration information that, with respect to its workers, the entity must make available to any citizen in compliance with the established active advertising obligations is not examined to the LTC and which, obviously, can be given to the person making the claim, but it is about providing information in exercise of the right of access (article 18 LTC), which is configured, according to the preamble of the same LTC, as a right that complements the information that the citizen can obtain through transparency.

In this sense, and taking into account the terms in which the request for information is made by the person making the claim, it is necessary to establish whether, through the right of access, they can have knowledge, on an individual basis, of the information relating to the reference salary supplement regarding the set of workers from (...) who have received it.

From the information available, we are faced with a temporary personal supplement applicable to cases of termination or removal from the workplace, except in cases where these occur due to a voluntary request for termination, if the termination or the removal are the result of a disciplinary file or insufficient performance that does not entail inhibition, regulated by the decrees of June 28, 2000, April 20, 2004 and February 14, 2008, issued by (...) in the framework of Title 5, chapter 3, 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.

The aforementioned DL 1/1997 regulates, in its article 77, the remuneration of removed or terminated officials. Specifically, section 2 regulates a variable personal supplement for cases in which civil servants are dismissed at discretion in accordance with the provisions of article 75.a) (civil servants appointed by the system of free appointment), for the purposes to guarantee, in the transition between two different jobs, a certain continuity in remuneration.

Remuneration guarantees of the type of personal and variable supplement provided for in this article, and in general the so-called transitory personal supplements, are usually considered as extraordinary remuneration, recognized in a personal capacity, depending on how the individual situation of each for specific regulatory and organizational decisions.

The local administration maintains, as can be seen from the minutes of the second mediation session, that the aforementioned salary supplement would have been received by approximately 113 people, who, in attention to the information that emerges from the opinion of the Legal Advisory Commission of the Generalitat of Catalonia of February 23, 2012 (FJ II), once terminated or removed from their position, they would have gone on to occupy another job within the organi

Therefore, it must be borne in mind, for the purposes of interest, that in this group of affected people (approx. 113 people) it seems that we could find:

- a) The people who would have been considered high-ranking officials and managerial staff of (...) and who would have been dismissed from their position by taking another job within the entity, which could be (or no) of trust or responsibility but that, in any case, they would have been busy receiving the aforementioned salary supplement for the purposes of maintaining a level of remuneration similar to what they would have been receiving while they were high-ranking or managerial staff.

- b) Other people who, without having this consideration of high position and/or managerial staff, would have occupied positions of trust or special responsibility within the entity, of free appointment or that entailed a high level of remuneration and who, in be terminated or removed from these positions, they would have gone on to occupy another job within the entity, which could also be of special responsibility or trust, or not, but which, in any case, would have been occupied receiving the aforementioned salary supplement for the purposes of maintaining a similar remuneration level to what they would have been receiving while they occupied these positions of trust or special responsibility.**
- c) Other people who would have occupied positions in which the indicated circumstances would not occur and who, for reasons theoretically not linked to the specific requirements of positions of trust or responsibility (for example, as a result of the elimination of the job or d 'a redistribution of cash, among other situations), they would have been removed from these positions and moved on to occupy others within the entity receiving the aforementioned salary supplement for the purposes of maintaining a level of remuneration similar to what they would have been perceiving while they occupied such jobs.**

In accordance with the criterion maintained by this Authority in previous reports on remuneration (IAI 20/2018, IAI 3/2019 or IAI 44/2019, among others), provide the requested information on the salary supplement of so that the affected people are directly identified is a more intrusive measure for the protection of personal data, which only seems justified in certain cases where the characteristics of the workplace justify it.

In view of the nature and specific characteristics of the salary supplement in question, it seems reasonable to think that the majority of people affected by the requested access will be those defined in sections a) and b) above, that is people who would have occupied -or they would still be occupying positions of trust, of special responsibility within the organization or of free appointment, or otherwise, positions that would have entailed in any case a high level

The Authority has been maintaining, in relation to positions of special responsibility or trust, that, although the LTC does not provide for the publication of their remuneration on the electronic headquarters or website, with regard to requests for 'access to this information, in principle the considerations made regarding senior positions and managerial staff can be extended to the LTC enables the publication of the remuneration received by them for any concept), given that, due to the uniqueness of the positions and also due to the level of remuneration they usually bring associated, the knowledge of their remuneration may be relevant for the control of the use of resources public

Purpose to which, we remember, the transparency law itself expressly responds, as established in its article 1.2: "the purpose of this law is to establish a system of relations between people and the public administration and other subjects obliged, 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."

This criterion transferred to the case at hand would lead to admit that it would be justified to give the person claiming the information on the salary supplement received by the people who may find themselves in the situations described in the sections a) and b) mentioned, even identifying them, having held jobs comparable (at least not in terms of remuneration) to positions of trust or special responsibility.

V

With respect to the people affected by the access who may find themselves in the situation described in letter c) of the previous section, these are people who would have received the reference salary supplement and who a priori would have been removed from positions other than those described in the letters a) and b) to which we have already referred, the Authority has been considering that the evaluation of the use of public resources, in cases like these, could be done by having the information on the remunerations received in a grouped manner by categories or according to the different types of workplace and not individualized.

It must be taken into account that the disclosure of information about 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.

Although in this case the remuneration information would only refer to a salary supplement, the truth is that the claimant could obtain information about the base salary and the remuneration supplements of the jobs held by public employees through other means, for example, through the RLT and the corresponding Budget Law.

Now, taking into account that we are faced with the perception of an atypical remuneration whose recognition, according to the statements made by the entity itself (minutes of the first mediation session), was declared null and void law, it could also be justified to provide that information about the said salary supplement that these workers had received that was necessary to be able to carry out an effective control over the use of public funds carried out by the persons responsible in matters of staff remuneration of the entity.

However, given that the transparency legislation does not pursue the control of workers, but the control of the administration's actions, it could be sufficient in this sense to deliver the requested information prior to pseudonymization of the data, which, in terms of article 4.5) of the RGPD, consists of "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 and organizational measures intended to ensure that personal data are not attributed to an identified or identifiable natural person".

In other words, deliver the information about the salary supplement by introducing a coding system that preserves the identity of the people affected (a fixed numerical code for each affected - without including, therefore, names and surnames or other identifying data -, known only to the person responsible for assigning it), so that they are not identifiable by third parties.

This option would make it possible to carry out a control of the entity's performance throughout the requested years (2000 to 2012) regarding the recognition of the aforementioned salary supplement.

VI

The GAIP also requests the opinion of this Authority on the possibility of facilitating access to the identity of a deceased person who received the salary supplement in question.

It must be taken into consideration that the data protection regulations are not applicable to the processing of data of dead people.

This is clear from recital 27 of the RGD, according to which:

"This Regulation does not apply to the protection of personal data of deceased persons. Member States are competent to establish rules relating to the treatment of their personal data."

And of article 2 of the LOPDGD, according to which:

"2. This organic law will not apply: (...) b) To the data processing of deceased persons, without prejudice to what is established in article 3. (...)."

So, from the data protection point of view, there would be no inconvenience for it to be given to the person claiming the identity of the deceased person who received the temporary personal supplement applicable to the cases of termination or removal from the post of work of the entity.

The GAIP considers whether, in this specific case, it would be necessary to transfer the claim to the heirs of this deceased person.

Article 42.3 of the LTC establishes that "in the case of claims in which the denial of access to public information has occurred for reasons derived from the rights of third parties, the corresponding claim must be transferred to third parties so that they can participate in the procedure."

In accordance with this article, in the event that the reason for denying access to the requested public information is the application of the limit of the right to the protection of personal data, in the terms established in articles 23 and 24 of the LTC, in principle it would be necessary to transfer the claim to the affected people so that they can participate and, if necessary, make the allegations they consider appropriate, in those cases in which they can be determined about the meaning of the resolution.

However, in a case like the one proposed, in which the person affected by access to their information about the perception of the salary supplement due to removal or termination of the position would have died, the right to data protection would not be an impediment because the person claiming access to the information requested regarding this person, given that, as we have seen, the data protection regulations do not apply to the treatment of dead people.

conclusion

The right to data protection does not prevent the person making the claim from being given individual information about the remuneration supplement that may have been received by senior officials, management staff and workers who held positions of trust or special responsibility within the entity when they are dismissed from their positions, despite going on to occupy other positions of equal or lesser responsibility.

Regarding other workers who held jobs where these circumstances did not apply, the delivery of the information should be carried out in a pseudonymised manner, in the terms set out in this report.

The right to data protection also does not prevent you from being given the identity of a deceased person who received said supplement, given that the data protection regulations are not applicable to the processing of data of dead people.

Barcelona, January 17, 2020