

CNS 48/2020

Opinion in relation to the query formulated by a council of professional associations in relation to a request for information regarding the allowances collected by a former president of the entity.

A letter from a council of professional associations (hereinafter, the Council) is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the request for information regarding the per diems collected by a former president of the Council.

Specifically, the consultation states that the Council has received a request under the Transparency and Good Governance Act, and that this request is characterized by:

"1.- To request specific amounts that, in terms of per diems, has been collected by a former president of our organization, being a request specifically related to a specific person, and not to the budget item intended for these per diems.

2.- It relates to a period prior to the validity of the Transparency and Good Governance Law.

3.- The person to whom the information affects, to whom we have transferred, in compliance with the provisions of the Transparency Law, does not authorize us to provide this information, as long as he respects his right to privacy and the protection of your personal data.

4.- Our institution is a corporation under Public Law, although we are not a public administration."

Analyzed the query, which is not accompanied by more information, and seen the report of the Advisory Board Legally, the following is ruled:

I

(...)

II

When the query is placed in these terms, it is necessary to refer to Regulation (EU) 2016/679, of April 27, general data protection (RGPD), according to which personal data is *"all information about an identified natural person or identifiable ("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;* (art. 4.1 RGPD).

The processing of personal data is subject to the principles and guarantees of the regulations for the protection of personal data, that is, the RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

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 they foresee, as now, 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 of the LOPDGDD, data processing can only be considered based on this legal basis of article 6.1.c) of the RGPD when so 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 of the Member States that they are applied 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. It is also necessary to refer to State Law 19/2013, of December 9, on transparency, access to public information and good governance (LT).

At the outset, the consultation mentions that the Council is a corporation under public law, although it is not a public administration.

Article 3.1 of the LTC provides that this law is applicable, among others, to: **"b) (...) professional associations and public law corporations in what affects the exercise of their public functions and consortia or other associative forms and their affiliates and commercial companies in which one of these administrations has a majority stake."**

According to article 58.2 of Law 7/2006, of May 31, on the exercise of qualified professions and professional associations, the councils of professional associations have the status of corporations under public law to fulfill the public functions attributed to them by law.

Therefore, it is necessary to conclude the applicability of the legislation on transparency and access to public information to the case subject to consultation, given that it affects the exercise of the Council's public functions, as it is information related to the remuneration system of the person who held the presidency.

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 information public as *"the information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions, including that supplied by the other subjects obliged in accordance with the that establishes this law"*.

The remuneration information of the staff of the entity making the inquiry, in particular, the information on the allowances that a former chairman of the Council would have received, is public information for the purposes of article 2.b) of the LTC and, therefore, remains subject to the right of access (art. 18 of the LTC). This right,

however, it 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 will be necessary to determine whether or not the right to data protection of the affected person can justify a limitation, in accordance with the criteria provided for in articles 23 and 24 of the LTC and the regulatory principles of personal data protection regulations.

Before that, however, it should be borne in mind that, according to the consultation, the request for information that would have been made "Relates to a period prior to the validity of the Transparency and Good Governance Law".

Regarding this matter, it should be noted that the LT entered into force on December 10, 2014 (ninth final provision LT). Since the transparency legislation enables the exercise of the right of access to public information, this right can be exercised by any citizen regarding any public information (art. 2.b) LTC), regardless of whether this information has been drawn up before or after the entry into force of said legislation.

Therefore, in the case at hand, although the request refers, according to the consultation, to information relating to a period prior to the validity of the transparency legislation (LT and LTC), this legislation is fully applicable.

A different issue is that, in certain cases, the date of preparation of the requested documentation it must be taken into account as a weighting element (art. 24.2 LTC), a matter to which we will refer later.

III

The object of the request is, according to the query, to know *"specific amounts that, in terms of per diems, have been collected by a former president of our organization, being a request specifically related to a specific person, and not to the budget item intended for these diets."*

It cannot be ignored that, in general, the disclosure of certain information about the income or remuneration of a natural person can facilitate the obtaining of an economic profile of that person. Now, in the case at hand, the information only refers to diets.

Therefore, in most cases it does not seem likely that a profile can be deduced from this information, but it can provide information about the work or professional activity of a certain person and part of their income and that it can affect your private life.

In any case, the information on the amounts received by a president or ex-president of the Council in terms of per diems, would not affect particularly protected data under the terms provided for in article 23 of the LTC, according to which: *"The requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, origin racial, health and sexual life, and also those 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 by means of a written to accompany the application."*

Therefore, access requires a weighting between the public interest in the disclosure of the information and the rights of the affected person, provided for in article 24.2 of the LTC:

"2. If it is other information that contains personal data not included in article 23 (data specially protected), access to the information can be given, with prior weighting rationale 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.*
- (...)."*

The Law obliges public administrations - including, among others, the entities of article 3.1.b) of the LTC- to publish *"the remunerations, compensations and allowances, the activities and the assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of public bodies, societies, foundations and consortia, and the indemnities they must receive when ceasing to hold office."* (art. 11.1.b) LTC).

According to article 8.1.f) of the LT, the subjects included in the scope of application of Title I of the LT (among others, public law corporations, in relation to their subject activities to administrative law, ex. art. 2.1.e) LT), they must make public, among others, *"The remuneration received annually by the senior officials and the **most responsible of the entities** included in the scope of the application of this title . Equally, the compensations received, as the case may be, on the occasion of leaving office will be made public."*

In this context, in relation to the entity formulating the query and the assumption raised, according to article 63 of Law 7/2006:

"1. Each council of professional associations must have a plenary body, in which all the professional associations that make it up must be represented. (...).

2. The plenary body must have at least a president, with the denomination that may eventually be established, a secretary and a treasurer. Unless the statutes provide otherwise, the presidency of the council is assumed on a rotating basis by representatives of each of the professional associations integrated in the council of professional associations, (...).

3. The president is responsible for the ordinary representation of the council of professional associations and the rest of the functions that the statutes, the law and the regulations grant him.

In accordance with the Council's Statutes, the President is responsible, among others, for convening, setting the agenda and presiding over all meetings of the Council and of the Permanent Commission, representing the Council before all kinds of Authorities and Courts, authorize the reports and communications that must be completed and execute the agreements that the Council or the Permanent Commission, as the case may be, adopt.

Therefore, it seems clear that we are dealing with a body, the president or president of the Council (or, in this case, a former president), who, due to the functions attributed to him, can qualify as the most responsible for the entity formulating the query, or equivalent to a high position, as is clear from its Statutes.

Taking this into account, at the outset, the Council would be obliged to publish the information on the remuneration received, if applicable, by its president, individually on their website or headquarters electronic and should cover the full amount for any retributive concept, compensation or allowance. Therefore, with more reason, she would be obliged to provide it or, at the very least, indicate the place where it is published (art. 36.2.b) LTC), if someone requests it.

Having said that, it should be borne in mind that the information requested in the case examined, as explained in the consultation, does not refer to the allowances received by the current president of the Council (information that should be made available to any citizen in compliance with the obligations of active publicity), but it would be to provide information relating to a former president of the Council, 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.

Regarding the temporal scope of the information, 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 a previous period, when referring to a former president of the Council, and that is relevant for the purposes of achieving the objective of transparency pursued, must also be accessible to the public, provided that this information is in the power of the obliged subject, in this case, the entity formulating the query, and that none of the limitations provided for in the laws should prevail.

At this point, we note that the consultation does not provide information on the reasons that may have been given, if applicable, by the person or persons who request to know the information referring to the allowances received by a former president of the Council, for which something that cannot be made a more specific assessment regarding the weighting element that assumes the purpose of the access (ex. art. 24.2.b) LTC).

In any case, and based on the information available, it must be taken into account that the control of use by the public administration or other entities subject to transparency legislation can make all kinds of allowances or emoluments linked to people who hold positions with a high level of responsibility, as would be the case of the current president or former presidents of the Council in the corresponding period, may be relevant for purposes that the public can form a critical opinion and assess its efficiency in the management of public resources, and this has been recognized by the LTC itself in foreseeing its disclosure in compliance with the obligations regarding active advertising (art. 11.1. b) LTC).

The fact of knowing what the per diems have been received, if any, by the person who would have held the position of president of the Council in a previous period and being able to compare them with those that may have been recognized, if applicable, in periods later (information which, as has been said, would be the subject of active publicity by application of the transparency legislation), may be relevant to the citizen in relation to the control over the efficiency of public resources. Likewise, depending on the amounts received, responsibilities can be demanded.

Therefore, it cannot be ruled out that knowing whether a former president of the Council received certain per diems could be relevant for the public, in relation to the control over the efficiency of the public resources available to them, according to their Statutes. the entity making the query.

From the perspective of the data protection right of the affected person, it does not seem that the passage of time is a criterion that, by itself, should restrict access to the requested public information (eg art. 24.2.a) LTC), solely due to the fact that this person is no longer part, at the time of making the request, of the Council of which he would have held the presidency in a previous period. In fact, in principle, the impact for the right to data protection should be less when the request refers to previous remuneration, than the knowledge of the current remuneration of an affected person.

All in all, in view of the information available, and taking into account the weighting elements of Article 24.2 of the LTC analyzed, access to information on the diems received by the person who would have held the position of president of the entity in a certain period of time.

IV

Having said that, the consultation adds that *"the person to whom the information affects, to whom we have transferred in compliance with the provisions of the Transparency Law, does not authorize us to give this information, as long as it is within his right to privacy and the protection of your personal data"*.

Article 31 of the LTC, in relation to affecting the rights or interests of third parties, establishes the following:

*"1. If the request for public information may affect the rights or interests of third parties, in accordance with the provisions of this law, in the event that the potential affected are identified or are easily identifiable, they must be transferred from the request, and they have a period of ten days to **present allegations if these may be decisive for the meaning of the resolution.***

2. The claims procedure referred to in section 1 suspends the deadline for resolution.

3. The transfer of the request must indicate the reasons for the request, if they have been expressed, but it is not mandatory to reveal the identity of the applicant.

4. The applicant must be informed of the transfer of the application to third parties and of the suspension of the deadline for issuing a resolution until the allegations have been received or the deadline for presenting them."

The allegations that can be made by an affected person in the hearing procedure are an element to be taken into account in the weighting of article 24.2 of the LTC. However, the simple opposition of the affected person should not automatically lead to the denial of access to the information. In the case at hand, and from the information available, it does not appear that the affected person has provided specific elements of judgment that should prevail over the right of access to public information.

In accordance with the considerations made in these legal foundations in relation to the consultation on a request for information regarding the per diems collected by a former president of the Council, the following are made,

Conclusions

In view of the information available, and taking into account the weighting elements of article 24.2 of the LTC, the data protection regulations would not prevent providing the information requested about the per diems received by a person who would have held the position of president of the Council in a certain period of time.

Barcelona, January 8, 2021

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