Ref.: IAI 1/2020

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information on the claim presented against the denial of a department of the Generalitat to the request for information regarding extraordinary services, per diems and compensations regarding all administrative and technical staff of the Administration of the Generalitat of Catalonia carried out by a trade union representative.

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 submitted in relation to the partial denial made by a department of the Generalitat to the request for information made by the general secretary of the CATAC-IAC Union, regarding extraordinary services, per diems and compensations for all administrative and technical staff of the Administration of the Generalitat de Catalunya.

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 September 16, 2019, the general secretary of the CATAC-IAC Union submitted to the department a request for access to the following information:

> **"Relation of the extraordinary services provided during 2018 specifying the name and surname of the staff, the position, the department, the management unit and the location, with the indication of the amount paid or the hourly compensation.**
>
> **List of per diems and allowances for service during 2018 specifying the name and surname of the staff, position, department, management unit and town, with an indication of the amount paid."**

2. On October 31, 2019, the Director General of Public Service decides "Partially approve the request for access to public information and provide the requested information in an anonymized manner, without indication of position and grouped by units directives (...)".

3. On November 29, 2019, the general secretary of the CATAC-IAC Union filed a complaint with the GAIP against the department's resolution, to which she attached a document in which she bases her complaint.

In his letter he states that the resolution of the director general of Public Service denies the identification of the people who have worked overtime and that the information has been provided grouped by management units without being individualized by means of an identification code.

With regard to the denial of the identification of people who have worked overtime, the report of this Authority IAI 27/2019 is cited in which article 34.9 is analyzed

of the ET that would enable workers' representatives to have access to the register of overtime hours worked by staff subject to its scope of application, as of May 12, 2019. On the contrary, the union representative argues that in this case we are moving in the application of the transparency legislation and that for these purposes the status of worker or civil servant of the person who performs overtime hours is irrelevant and that the knowledge of the identity of the person who has performed a certain number of overtime hours is not it represents a sacrifice of the privacy of the affected workers and, on the other hand, it does assist in the exercise of the functions of monitoring compliance with the regulations that, among others, the law grants to unions.

With regard to the denial of individualization, it is argued that providing information grouped by administrative units voids the purpose for which the information is requested and the monitoring and control functions of the unions.

4. On December 5, 2019, the GAIP requests the department to issue a report in relation to the claim presented, which is not included in the file.

5. On January 3, 2020, 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 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; "(article 4.1 RGPD).

The data available to the required department, which identify and refer directly to the workers, as well as other data that may refer more specifically to the workplace they occupy, but which can be associated or can be linked to a specific worker, and which therefore identify you, are personal data and are protected by the principles and guarantees established by the RGPD.

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 department, 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 the general secretary of a union is "public information" for the purposes of the LTC and remains subject to the access regime provided for in these regulations. This right, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws.

Also, with regard to the regime of access to public information, it must be taken into consideration that the first additional provision, section 2, of the LTC establishes that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law".

Therefore, in the case at hand, it will be necessary, once the nature of the personal data that would be affected has been determined, to analyze whether there is a special regime that enables access to that information and/or in its absence, according to with the criteria set out in articles 23 and 24 of the LTC and the regulatory principles of the personal data protection regulations, determine whether access to said information can be facilitated.

III

The claim presented by the trade union representative aims at access, with respect to all the administrative and technical staff of the Administration of the Generalitat de Catalunya (identified by first and last name, position, department and management unit in the that belongs), to the relationship of the extraordinary services provided during the year 2018 with the amounts paid for that concept or, where appropriate, the hourly compensation, as well as the per diems and compensations due to service during 2018 and the amounts paid.

Given that the person making the request does so in their capacity as general secretary of a union with majority representation in the representative bodies of the Generalitat, and that the information requested refers to administrative and technical staff (which can have both the

status of labor personnel as civil servant), it is necessary to take into account the provisions established by Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee (henceforth EBEP) as well as by the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 5/2015, of 23 October (henceforth, ET).

These rules attribute to the boards or staff delegates (art. 39 EBEP), as well as the Company Committee (art. 63 ET), as specific bodies representing civil servants and public workers with employment contracts respectively, certain functions for the exercise of which it recognizes the right to access certain information, which could include personal data of the workers.

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 works councils or the representative bodies that are established in the Public Administrations" as well as "Having access to the same information and documentation that the company makes available to the works committee, union delegates being obliged to keep professional secrecy in those matters in which it legally applies" (article 10.3).

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, probable evolution of the 'employment in the corresponding field, and on performance improvement programs, however, there is no specific regulation in the EBEP that enables the applicant to access the requested information on an

For its part, article 64.1 of the ET provides that "the works committee will have the right to be informed and consulted by the employer on those issues that may affect the workers, as well as on the situation of the company and the employment evolution in the same, in the terms provided for in this article." And, he adds that information is understood as "the transmission of data by the employer to the company committee, so that he is aware of a certain issue and can proceed to its examination (...)."

Next, sections 2 to 5 of this article 64 of the ET contain specific forecasts in relation to the questions or matters on which the works councils have the right to receive information, some of them with a quarterly frequency (article 64.2 ET), others annually (article 64.3 ET) and others when appropriate (article 64.4 and 5 ET).

All this for the purpose of exercising, among others, the function of "monitoring compliance with the current labor, social security and employment standards, as well as the rest of the agreements, conditions and company practices in force, formulating, in his case, the appropriate legal actions before the employer and the competent bodies or courts" (article

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 this provision, 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, consequently, also to the record of overtime hours with the corresponding identification of the affected workers.

However, as a result of the regime of entry into force 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, and therefore would not be applicable to the access request made that refers to the special services provided during 2018.

In this sense, and in relation to the considerations made by the trade union representative in her letter of complaint, although the amendment introduced to article 34.9 of the ET recognizes the workers' representatives the possibility of accessing the daily records of the workers' day, and consequently to the record of overtime hours worked, this constitutes a special access regime that is applicable exclusively to labor personnel subject to the ET regime with the time limitation imposed by their regime entry into force, and there is no equivalent access regime to the EBEP for civil servants.

It must be taken into account that this special access regime established by the ET would enable the workers' representative to obtain information on the number of overtime hours worked by each worker from May 12, 2019 (therefore, no would include the period requested by the claimant) and on the number of these that have been compensated, but not on the information on the specific remuneration received for this concept, with respect to which (even though the knowledge of the same can obtain indirectly) the general access regime provided for in the transparency legislation set out in section IV of this report will apply.

In short, in the case at hand, given the temporary limitation on the application of article 34.9 of the ET, the general regime of access provided for in the transparency legislation will apply both with regard to the 'access to the number of overtime hours worked by labor and civil servants, as well as regarding the remuneration corresponding to those hours, per diems and indemnities due to service.

IV

Given that the public information that is sought to be accessed contains personal data that is not considered specially protected data under the terms of article 23 of the LTC, 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 all the administrative and technical staff of the 'Administration of the Generalitat of Catalonia.

In this weighting, special consideration is given to the fact that the claimant acts on behalf of a majority trade union in the representative bodies of the Generalitat, given the functions of control and monitoring of compliance with current regulations as well as, in their in the case of the pacts and conditions established, which, as explained, are attributed to both the EBEP and the ET and union legislation.

This Authority already pronounced in the IAI report 27/2019 on the access of a trade union section to the list of overtime hours worked by the workers of a City Council during the year 2018, and we can advance that the conclusions of that report are fully applicable to the case at hand.

As was highlighted in the aforementioned report, the information on the extraordinary services performed by each specific worker in a specific time period that have been financially remunerated, provides information that is part of the complementary remunerations that are essentially linked to the individual who occupies a certain job and who must correspond with the amounts set by each administration with the corresponding regulatory limitations. In addition, complementary remunerations include those received in the form of per diems as well as other indemnities due to service, which are also the subject of the request made.

It cannot be overlooked that the disclosure of information about the income of a natural person facilitates the obtaining of an economic profile of the affected person.

In the same sense, the disclosure of information on the number of compensated overtime hours worked by each worker provides information on aspects of their work activity that could have an impact on their professional assessment and even on the his private life. Thus, giving individualized access to this information would make it possible to know if a certain person accumulates a high number of overtime hours, how the

their working day, their behavior habits (in the sense of accumulating overtime hours or compensation days on unusual schedules or days) etc., which depending on the scope of the analyzed period and the attribution of overtime hours that has been done, it may even allow you to obtain a job profile of the affected staff.

With regard to remuneration, article 11.1 b) of the LTC, establishes that the Administration must make public on the transparency portal, the remuneration, compensations and per diems received by senior officials of the Public Administration.

This obligation of active publicity in the matter of remuneration must entail recognizing the right of access to the remuneration information of senior public administration officials, including overtime hours worked, compensation and per diems received. This same criterion, as this Authority has previously highlighted, can be extended with respect to access to the remuneration of personnel who occupy positions of trust, of special responsibility within the organization, of free appointment, or that involve a high level of remuneration.

Thus, although in these cases the law does not provide for the publication of their remuneration on the Transparency Portal, with regard to requests for access to this information, it must be borne in mind that these are sites that their uniqueness and also due to the level of remuneration they are usually associated with, knowledge of their remuneration can be relevant for the control of the use of public resources. In these cases, it would be justified to provide individualized remuneration information, which could include the overtime hours worked, the amounts paid for this concept as well as the per diems and allowances

The application of this criterion to the case at hand means that it is considered justified to provide individualized remuneration information relating to the extraordinary services performed, as well as the allowances and compensations of the administrative and technical staff of the Generalitat of Catalonia who occupy positions of trust , of special responsibility within the organization, freely appointed, or with a high level of remuneration, since, as has been shown, due to their uniqueness and level of remuneration, their knowledge may be justified for purposes of control of the use of public resources and more, when this control is carried out by a representative of the workers.

With regard to the rest of the workers, this Authority has maintained that, in accordance with transparency legislation, information on remuneration must be published in an aggregated manner, that is to say, associated with the jobs of the Administration public in question grouped according to the levels and the bodies to which they belong, without, in this sense, having to indicate the identity of the specific person who occupies a certain job.

In accordance with this criterion, it is not considered appropriate to provide information on the specific remuneration corresponding to the performance of extraordinary services, per diems and other indemnities due to the service received by this group on an individual basis.

However, it cannot be ruled out that it may be relevant to obtain an individualized report of the extraordinary services performed by public workers in order to exercise the functions of monitoring compliance with current regulations, specifically that relating to working hours and staff working hours, which the workers' representatives are assigned. Thus, providing information on the different extraordinary services carried out in an individualized way, could

be necessary for the purposes that the trade union representative could control whether the limits established by the regulations regarding the performance of overtime hours are being respected, the procedure established for that purpose and detect any irregular actions that may have occ

However, this purpose can also be fulfilled without the need to sacrifice the privacy of the affected workers, because an individualized relationship can be facilitated, without including the identity of the workers. It should be remembered that according to article 5.1 b) of the RGPD "the data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Therefore, in this case, the purpose of transparency can also be achieved through 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 and organizational measures aimed at ensuring that personal data are not attributed to an identified or identifiable natural person;" (article 4.5 RGPD).

To this end, this Authority considers that the list with the extraordinary services performed by each worker could be facilitated, replacing their first and last names with a code assigned to each of them. It should be noted that in order for this to be carried out, it is necessary to deal with jobs that have a sufficiently large number of workers to prevent their re-identification.

In order for these codes to be effective from a data protection perspective, it is necessary to ensure that the identity of the worker is known only to the person who attributes the code, so that the worker is not identifiable by any other person, among others , by the representative of the workers who will receive this information. So, for example, use the no. of ID or another code that can be known by third parties would not be a good option.

The code should remain in the communication made in this regard to the claimant, for the purposes of being able to see the accumulation of overtime hours assigned to each of them, but it should only be used for monitoring of the performance of overtime hours, and not for any other information other than this specific treatment, since, if it were to be used in a general manner for all actions carried out in the worker's work area, it would be easy for the crossing various data that the trade union representative could obtain, made their identification possible and would end up having the same result as that which can have the identification of working people with their ID number.

This criterion, in the case at hand, would apply to both civil servants and workers subject to the ET. As we have already explained, by application of article 34.9 of the ET the representative of the workers could obtain the individualized list of the extraordinary services provided by the labor personnel from May 12, 2019, but the request refers to a temporary period in which this forecast was not yet in force.

From all the above, it is considered that the option of providing a list of extraordinary services together with a numerical code in place of the first and last names of the workers (except for the positions of special responsibility to which we have referred) would be the more suitable, in order to f

in this case the fair 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.

Conclusions

The data protection regulations would not prevent the claimant's access to the list of overtime hours with an indication of the amounts paid, as well as to the per diems and indemnities due to the service corresponding to the personnel who occupy positions of trust, freely appointed , of special responsibility within the organization or involving high levels of remuneration.

As for the rest of the workers, the data protection regulations would not prevent access to the list of overtime hours worked during the requested period of time as long as this information is provided by substituting the names and surnames of the persons workers by a code that does not allow them to be identified.

Barcelona, January 17, 2020