

Ref.: IAI 2/2020

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public on the claim presented against the refusal by a town hall of the request for access to the signings of the local police staff

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 refusal by a town hall of the request of access to the signings of the local police staff.

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 9, 2019, a citizen submits a letter to a town hall, through which he requests overtime and the fixing of the entire Local Police staff, of the officers, corporals, sergeant and sub-inspector on the dates between from January 7, 2015 to October 9, 2019. In the letter it is stated that he is making the request as a citizen and not as a municipal official.
2. On November 16, 2019, the interested party filed a claim against the city council, before the GAIP.
4. On November 19, 2019, the GAIP requested a report from the city council in relation to the claim presented. The claim is accompanied by the report issued by that city council on December 19, 2019, as well as the decree in response to the request and the notification to the interested party, in which the request is estimated presented with regard to access to the overtime hours of the staff on the requested dates, but the request is rejected with regard to the signings, as it considers that this information contains particularly protected data due to the fact that it has implemented a day registration system based on the biometric data of its staff.
5. On January 15, 2020, 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 Authority of Data Protection, the APDCAT is the independent body that aims 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 City Council, which identify and refer directly to 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 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 complaint filed against the city council 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

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 containing personal data, it is necessary to assess, in application of the regime provided for in article

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 that is the subject of the request.

In the case at hand, the request for access to information referred to overtime and the signings of the local police staff, of officers, corporals, sergeants and sub-inspectors. Through the claim, and according to the information sent, the city council would have provided the interested party with the aggregated list of the overtime hours worked by the urban guardian staff during the requested period, but would have denied the 'access to signings.

Access to information on the global overtime worked by the urban guard staff would not present problems from the point of view of the right to data protection.

However, if individualized information was provided for each member of the workforce or, even aggregated by category, as could be deduced from the request, it would contain personal data that could relate to a natural person identified or identifiable, so it will be necessary to analyze whether this information can be accessed.

It should be noted that information relating to local police overtime and staff signings does not appear to contain specially protected data under the terms of Article 23 of the LTC, and would therefore not be applicable to this information the limit provided for in this article.

At this point it should be pointed out that the fact that the City Council uses a time control system based on personnel biometric data, which according to article 9.1 of the RGPD are a special category of data (the management of which in the labor field must be authorized by a law or a collective agreement with the appropriate guarantees, in accordance with article 9.2.b) of the RGPD), does not imply that the information on staff signings must contain the biometric data used in the time control process and that the limit provided for in article 23 of the LTC must be applied.

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."

In accordance with this article, access to the requested personal information is subject to 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 Police staff local

In relation to overtime hours, it must be taken into account that, to the extent that these can be perceived with the corresponding compensation as gratification, whether economic or on holidays, it is part of the complementary remunerations that are specially linked not to the place of work, but to the natural person who occupies it, and must correspond with the amounts set by each administration with the corresponding regulatory limitations.

In terms of remuneration, the transparency legislation obliges public administrations to publish on an individual basis "The remuneration, compensations and per diems, 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 indemnities they must receive when ceasing to hold office" (11.1 b) of the LTC) and, on the other hand, to be published in a grouped manner, based on of the levels and bodies, "The general information on the remunerations, compensations and allowances received by public employees" (11.1 e) of

This obligation of active advertising in the matter of remuneration must entail recognizing the right of access to the remuneration information of senior local officials, including overtime hours worked, compensations and per diems received. This same criterion, as this Authority has highlighted in other reports, can be extended with respect to access to the remuneration of staff who occupy positions of trust, of special responsibility within the organization, of free appointment, or who they carry a high level of remuneration.

This could be the case of the head of the local police force, who, under the command of the mayor or the person to whom he delegates, exercises immediate command of the force (article 26.1 of Law 16/1991, of July 10, from the local police). The head of the police has the following duties: "a) Direct, coordinate and supervise the operations of the body, and also the administrative activities, to ensure their effectiveness. b) Assess the needs of human and material resources and formulate the relevant proposals. c) Transform into concrete orders the guidelines for the objectives to be achieved, received from the mayor or the office to which he delegates. d) Inform the mayor, or the position to which he delegates, of the operation of the service. e) Fulfill any other function assigned to him by the body's municipal regulations (article 27 of Law 16/1991), and therefore, his situation would be comparable to that of managerial positions.

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 having to indicate the identity of the specific person who occupies a certain job.

In the case we are concerned with, the requested information refers to the categories of sub-inspector and sergeant, which correspond to personnel of the intermediate scale, and to the categories of corporal and agent which correspond to the basic scale, according with the established in article 24.1 Law 16/1991, of July 10, of the local police.

According to the information published on the electronic headquarters of the town hall, the command of the Local Police of the town hall would fall to one of the positions of sub-inspector, if this were the case, it would not seem that there could be any inconvenience in giving the applicant the information on the overtime hours worked by the person who holds the functions of head of the

well, regarding the rest of the workforce, the remuneration information must be provided in an aggregated manner.

The claimant, beyond making it clear that he is requesting the information as a citizen and not in his capacity as an official of the city council, does not justify the specific reason for which he is interested in accessing the requested information. According to article 18.2 LTC, the right of access does not require the citizen to state the specific reasons that would justify access to certain information, but these may be relevant when deciding on the prevalence between other rights, in fact the purpose is one of the weighting criteria that, as we have seen, points out in article 24.2. b) of the LTC.

It should be noted that the purpose of the transparency law is " establish a relationship system between the people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and of administrative management and the guarantee of the retention of accounts and of responsibility in public management (article 1.2 LTC). In the absence of greater concreteness on the part of the applicant, it is necessary to place the purpose of online access with the purpose of the transparency law.

In this context, obtaining an individualized report of the overtime hours worked by the municipal police staff can be relevant for the purpose of evaluating the management carried out by the governing bodies of the corporation, the criteria for the assignment of certain services and, ultimately, a control of public expenditure, which could justify the claimant's access to the requested information.

However, the principle of minimization requires that the data be adequate, relevant and limited to what is necessary for the purpose for which they are processed (Article 5.1.b) of the RGPD). In application of this principle and, given the purpose of the access in this case, it is considered that the city council could initially provide the information without needing to sacrifice the privacy of the affected workers.

As has been highlighted in other reports of this Authority, in the event that the volume of the group affected is large, the treatment that could be applied to the information would consist of prior pseudonymization of the data, which consists of the terms of the RGPD in "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 the personal data are not attributed to an identified or identifiable natural person" (article 4.5 RGPD).

Pseudonymization is therefore a treatment of information that is subject to data protection regulations, and which consists, for example, of replacing a person's first and last name, or any other identifying data, with a code, so that if there is no additional information, known only to the person who has carried out the pseudonymization, which allows establishing a link, it will not be possible to know who this code corresponds to.

In the case we are dealing with, the affected group is composed (according to the information published on the council's electronic headquarters) of 28 officers, 7 corporals, 1 sergeant and 2 sub-inspectors.

Facilitating pseudonymized information but aggregated by category, as indicated in the request (officers, corporals, sergeant and sub-inspectors) would directly identify the overtime hours worked by the sergeant and without disproportionate efforts by the sub-inspectors. Therefore, pseudonymisation, in this case, would only be effective if, once the code has been assigned to each worker, this information is not grouped by category.

In the case being examined, it must also be taken into account that, as it concerns the staff of the municipal police, the use of the TIP of each officer cannot be considered suitable to guarantee the privacy of the persons concerned, since it is a numerical code that can easily be known, without disproportionate effort, by the rest of the workers in the police stations or even by other people.

IV

With regard to access to the signings of the Municipal Police staff, the previous reasoned weighting between the public interest in the disclosure of the information and the right of the affected persons, which provides for article 24.2 of the LTC , would go through the following considerations.

As stated, the applicant does not state what the purpose of the access is, but makes it clear that he is making the request as a citizen, despite his status as a municipal official.

Access to the time records of the staff could be justified, in accordance with the purpose of the transparency legislation, by carrying out, from the monitoring of compliance with the staff schedule, a verification of the performance of the staff local administration and compliance with the regulations in this matter.

But this monitoring and control of the legality of municipal action can also be carried out without knowing the identity of the specific people in the workforce who carry out certain entry and exit markings at their workplace. In this sense, it cannot be forgotten that the purpose of the transparency legislation is not the control of workers but a control of municipal action.

In this case, the purpose of the transparency legislation would justify access to the requested information, but this purpose could also be achieved, without sacrificing the privacy of the people affected, by anonymizing the information.

The pseudonymization of the information is ruled out in this case, even if it is offered without grouping by category, since given the small number of employees of the Municipal Police (38 people), the great temporal scope of the period requested, as well as the ease of access to specific aspects of time compliance by a 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 person requesting , who, as stated in the application, would be a municipal official.

Thus, for example, there is the possibility of re-identification of the affected people based on the monitoring that the applicant could do of the specific times of entry and exit of certain people on a given day and their crossing with the information alone -bid on other days, so it could even allow you to get profiles.

For all the above, it is considered that the purpose of monitoring the actions of the administration in the case of access to staff time records can also be achieved without sacrificing the privacy of municipal police workers, of in accordance with the principle of data minimization. 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 anonymous manner.

Conclusions

In accordance with data protection regulations, the overtime hours worked by the Local Police staff can be communicated to the person making the claim as long as this information is provided in a pseudonymous manner without aggregating by category.

With regard to the information on the signings of the Local Police staff, the data protection regulations would not prevent communication to the person making the claim, as long as this information is provided anonymously.

Barcelona, February 13, 2020