

IAI 6/2021

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against a body for the partial denial of access to the list of appointments made in relation to the last grading of 19 February 2019 of people who come from the job boards.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim presented against a body for the partial denial of access to the list of appointments made in relation to the last grading of February 19, 2019, of people who come from the job boards, identifying them with their first and last names and the last five digits of the NIF, specifying the stock exchange from which they come (the stock exchange of the professional category), the start date of the appointment, and the end date of the appointment if known.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, in accordance with the report of the Legal Adviser, I report the following:

Background

1. On November 27, 2020, a citizen presented to the organization, in his capacity as a representative of the workers in the Personnel Board, and as a legal representative of the Trade Union Section and the Intersyndical-CSC, a request under Law 19/2014, of December 29, on transparency, access to public information and good governance, which motivated the need for its trade union activity to access the information Next:

"The list of appointments made as a result of the last grading of people carried out on February 19, 2019, who come from the different job boards (one job board for each professional category as published), of the Territorial Management Catalonia Central identifying them with their first and last name and the last five digits of the NIF, specifying the stock exchange from which they come (the stock exchange of the professional category), the start date of the appointment, and the end date of the appointment if known

Regarding the format of the information, we ask that the data be presented in an Excel document, which is the usual software for processing this type of information, and that it be delivered to us via corporate mail."

2. On January 14, 2021, the organization decides to partially approve the request for access to public information submitted, in the following terms: "(...) delivery of the list of appointments subscribed to the Territorial Management Central Catalonia from February 19, 2019 until the date of the request (November 27, 2020) in application of the job board of this Central Catalonia Territorial Administration, although this information must be provided without

contain data that allows the identification of the named persons, such as the first and last name or the last 5 digits of the NIF or any other personal data, information that will be given to the person requesting, therefore, in terms similar to employees to deliver this same information to the Personnel Board and in this case through the corporate email in Excel document format, as requested.”

3. On January 15, 2021, the applicant for access to public information submits a claim to the GAIP against the organization for the partial denial of access to the requested information.

4. On February 10, 2021, the GAIP requests the body to issue a report on the claim submitted, identify the third parties affected by the access and send the complete file to which it refers.

5. On February 16, 2021, the GAIP addresses the request for a report to this Authority in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance.

Legal Foundations

I

(...)

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 information requested by the claimant consists of "The list of appointments made as a result of the last evaluation of people carried out on February 19, 2019, who come from the different job boards (one job board for each professional category as as they are published), of the Territorial Administration of Central Catalonia identifying them with their first and last names and the last five digits of the NIF, specifying the stock exchange from which they come (the stock exchange of the professional category), the start date of the appointment, and the end date of the appointment if known)" is public information that contains personal data.

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 RGD. Therefore, the communication of personal data by the body, as a result of the request made by the person claiming, is data processing under the terms of the RGD.

The RGD 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 RGD 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 RGD 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 RGD when so established by a rule with the rank of law.

At the same time, article 86 of the RGD 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 presented by the union representative 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.

Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the limitations and criteria provided for in the transparency legislation (articles 23 and 24 LTC), and the principles of the personal data protection regulations.

This Authority has already ruled on a request for access by a trade union representative to the list of appointments made following the last appraisal of people carried out on February 19, 2019 who come from the job boards of the Territorial Administration of Central Catalonia identifying them with their first and last names and the last five digits of the NIF, in the IAI 42/2020 report that can be consulted on the Authority's website. In the claim that is the subject of this report, it is also requested that that information include the stock exchange from which the appointed persons come (the stock exchange of the professional category), the start date of the appointment, and the end date of the appointment if known).

At the outset, the arguments on which the IAI 42/2020 report is based are applicable to the case at hand. Thus, according to article 23 of the LTC, requests for access to information must be denied if "the information to which access is sought contains particularly protected personal data, such as those relating to ideology, trade union membership, religion, beliefs, racial origin, health and sex 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 expressly consents to it by means of a written document that must accompany the request".

It can be ruled out, at the outset, that the requested information contains personal data that have the consideration of special categories of data in the terms of article 23 LTC. Apart from these cases, article 24 of the LTC establishes:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights.

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the people affected. 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."

According to article 24.1 of the LTC, access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains personal data merely identifying unless,

exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

This article generally enables access to merely identifying information (name, surname and position) of public employees who intervene by reason of their functions in the different procedures or public actions carried out by the Administration, unless circumstances concur specific that justify the prevalence of the right to data protection of the person or persons affected.

With regard to the rest of the information that contains personal data, a reasoned weighting of the public interest in disclosure and the rights of the affected persons will need to be carried out, under the terms of article 24.2 of the LTC. In order to carry out this weighting, the purpose of the access must be taken into account, among other circumstances (especially if it has a historical, statistical or scientific purpose) and the guarantees offered, or the fact that it may affect people's

In this weighting, it must be taken into account that, in the case at hand, the applicant justifies access in his capacity as a member of the Personnel Board in order to carry out his trade union activity.

In this sense, article 40.1 a) of the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (EBEP) establishes that the Personnel Boards (and the Personnel Delegates, as the case may be), will have, in their respective areas, among others, the function of receiving information on the personnel policy, as well as on the data relating to the evolution of remuneration, likely employment trends in the corresponding field and performance improvement programs.

The body would have based the partial denial of access to the requested information on the criterion that the " Compact of the Sectoral Negotiating Board of Health regulating the selection system for the appointment of temporary statutory staff in the field of the public company Institut Català de la Salut", published by Resolution TSF/67/2020, of January 10, signed on November 22, 2019, by the social representation, by the General Union of Workers (UGT), Doctors of Catalonia (MC) and the Nursing Union (SATSE) would limit access to the personal information of the appointments to the trade union organizations that sign the same, in accordance with the provisions in section 5 of the pact.

The organization focuses its argument on the fact that access to information would go against the right to freedom of association and states the following:

"(...) The fundamental right to freedom of association recognized in our legal system acts, in this specific case, within the framework of a Trade Union Pact, the holders of which are the trade union organizations that subscribe to it (through the figure of the technician in matters of selection, appointed for the purpose), and not any other union or any other natural or legal person, such as the person requesting, and stating the contrary would entail violating a fundamental right by granting the right to access information requested in exercise of a mere right of legal configuration such as, in accordance with the legal system currently in force, the right of access to public information. In short, estimate access to this information with the nominal and NIF data of those appointed in favor of a representative of the workers of a union not a signatory to the Pact that alleges a legal right of access to the

public information, would mean granting the petitioning union the same information rights that the Stock Exchange Pact reserves, through the Monitoring Commission, to its signatories, a fact that would entail violating the fundamental and superior right to freedom of association of these three unions signatories in accordance with art. 28 CE (connected to the right to 37 CE), as third-party unions that have not signed the Pact (and as trade union organizations that are not part of the negotiating table and could not sign it) to obtain the same rights and benefits as legitimate and signatory unions (...)."

As already analyzed at the time, the Stock Exchange Pact foresees a joint Monitoring Commission made up of representatives of the company and the signatory trade union organizations (UGT, MC and SATSE), and established in this framework as a fundamental instrument and essential for analyzing and evaluating the application of the Pact and harmonizing the interpretations and cases arising from its development.

Section 5.2 of the Stock Exchange Pact provides that the Monitoring Commission can, "appoint technicians in matters of selection, previously proposed by the signatory unions. These technicians, in order to carry out their responsibility, must have specific access to the application that manages the job board to obtain the necessary information on the relationship of people, with the corresponding priority and form of employment, taken into account when carrying out the various appointments" (ap. 5.2).

This provision of article 5, would not refer only to the information requested in this claim but includes the access by those designated technicians to information of all the people who are part of the stock market. Therefore, it would not apply to the case at hand.

On the other hand, the claim is directly related to what the Pact provides in its section 16, regarding the communication to the Personnel Board of the appointments made, in the following terms:

"Information to representative bodies"

Every month, the Personnel Directorate of each territorial unit will give an account to the Personnel Board of the appointments made, in the terms provided for in article 40.1 of the TREBEP and in accordance with what is established by the current regulations on the protection of personal data staff."

There is therefore a specific provision for communication to the Personnel Board of the appointments made in the framework of the organization's job board management. This communication must be carried out "in accordance with the provisions of the data protection regulations".

As this Authority already highlighted in report CNS 42/2020, it does not seem that the possibility that certain technicians of the signatory trade union organizations have direct access to the job board management application is a circumstance excluding the right of access to public information of other right holders. In addition, the provision of section 16 does not exclude the possibility that this information includes the personal data of the appointments since the only consideration that is made is that the communication is carried out in accordance with the provisions of the protection regulations of data

Access to this information by the members of the Personnel Board could be justified by the performance of the control functions attributed to them by the current regulations and which would allow them to monitor and supervise the management of the job board of the body that would coincide in this case with the purpose of the transparency law itself, which aims to "establish a system of relations between people and the public administration and the other obliged subjects, based on the knowledge of public activity, encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and accountability in public management" (article 1.2 LTC). The fact of knowing the appointments made by the job board with the identification of the persons appointed seems to be necessary and provided information to be able to evaluate the use by the organization of that job board.

Finally, another element to take into consideration when weighing the rights at stake is the possible damage that access to the information could cause to the people about whom their data is communicated. It is clear that the communication of personal data to a third party has an impact on the holder of the same, given that these are people who hold, or have held a job in a public entity are subject to a regime of publicity of appointments since there is a public interest that justifies this publicity regime. On the other hand, the organization has not highlighted any specific circumstances that may affect the interested parties that justify a limitation to this access.

This Authority has previously ruled on the right of access by workers' representatives to information relating to people hired or appointed on an interim basis from a labor exchange. Thus, in the IAI 8/2017 report that can be consulted on the Authority's website www.apdcat.cat, the following considerations were made:

"In this context, with regard to the identification data of the person who holds or has held a job as a geriatrics assistant in the Provincial Government, it must be taken into account that the revised text of the Law of Basic statute of the public employee (EBEP), approved by Royal Legislative Decree 5/2015, of October 30, establishes that personnel selection processes in the field of Public Administrations are subject to a series of principles, among which it is worth highlighting those of advertising and transparency (article 55.2.a) ib)). Specifically, with regard to the provision of jobs for civil servants, the EBEP provides that they must be provided through procedures based, among others, on the pri

On the other hand, the Regulation of personnel in the service of local entities (RPEL), approved by Decree 214/1990, of July 30, in its article 80.2 establishes that "once the tests have been completed, it must be made public the list of applicants in order of score, which cannot contain a higher number than the number of vacant places offered". Therefore, people not selected will not be part of this list. In this case, then, it seems that the purpose is not only that each applicant can know his result, but that the list of selected people can be known to the general public. In addition, article 82 of the RPEL expressly provides for the publication in the BOP of the appointment of the selected persons.

On the other hand, article 9.1.g) of Law 19/2014 establishes that the results of the selective processes for the provision and promotion of staff must be published (on the transparency portal or the corresponding electronic site) - it is not distinguished if it is a provisional or definitive provision - and article 10.1.b) of Law 29/2010, of August 3, on the use of el

public sector of Catalonia, establishes that information must be disseminated by electronic means on access and staff selection.

From the information available, it would seem that at least on most occasions the places to be filled are for a few days or for a slightly longer period. It would therefore be a form of provisional provision. Having said that, it must be noted that if a system of publicity of the appointment is foreseen for those cases in which the definitive provision procedure has been followed with all the guarantees, with more reason it will be necessary to be able to access this information in those cases in which there is a greater margin of discretion, or at least fewer guarantees, for the provisional provision.

According to these forecasts, in which the results of the selective job provision processes are expressly required to be published, it does not seem that there can be any obstacle, from the point of view of the right to data protection, so that any citizen can request from the Administration a list that includes the identification data of the people who have been appointed as geriatric assistants at the Provincial Council during a specific period of time, regardless of whether these people were part of the job board or not.

With regard to access to information consisting of whether a person who has been appointed as a geriatric assistant was part of the labor exchange or not and, in the latter case, the duration of the appointment, it must be taken into account that the person requesting access is the trade union section and, to the extent that the information is necessary for the union representatives to carry out the functions attributed to them by the regulations, it could not be ruled out that it would be necessary to access certain information of a personal nature, such as that of receiving information about the policy of personnel and that of monitoring compliance with the current rules regarding working conditions (article 40.1.a) and e) EBEP).

As can be seen from the request, it seems that the purpose of the access would be to control the use of the job board by the Provincial Council. In this context, the fact of knowing, of all the appointments made as a geriatric assistant, which ones correspond to people from the labor market and which ones do not, as well as the duration of the latter, seems to be necessary information and provided to be able to evaluate the use by the Provincial Council of the job exchange."

Therefore, there does not appear to be any obstacle, from a data protection point of view, to facilitating access to this information.

Also, it should be taken into account that Decree 8/2021, of February 9, on transparency and the right of access to public information, specifies in its article 21 which are the specific procedures that are affected by the 'obligation of active publicity regarding calls for proposals and the results of the selective processes for the provision and promotion of personnel, and what is the specific information that must be published. Thus, this article 21 establishes:

"1. For the purposes of letter e) of article 9.1 of Law 19/2014, of December 29, public administrations must publish the calls for proposals and the results of: a) Access procedures to the bodies and ranks of civil servants, statutory and labor staff.

b) Internal promotion procedures. c) Provisional and definitive provision procedures. d) Procedures for the selection of temporary staff or temporary workers, including temporary staff exchanges. e) Scholarships and grants for providing services. f) Intern recruitment offers.

2. The data to be published must refer, at least, to the announcement of the call, the bases, the official announcements and the name and surname and the four numbers of the national identity document or equivalent document of the persons admitted to each test or exercise of the process and of the person finally selected, in accordance with the criteria established in the field of data protection.

3. The update of the publication of the data is continuous, depending on the development of each call. In the event that there is no data to be published, this end must be noted."

The fact that in this claim you also request that the stock exchange from which they come (the professional category stock exchange), the start date of the appointment, and the end date of the appointment be specified, does not alter the considerations that were made in these reports.

Therefore, in line with the criteria supported by this Authority, in the case at hand, there should be no obstacle to the workers' representative being able to access the list of appointments from the job boards that he requests with indication, as requested, of information relating to the specific job board from which they come and the start and end date of the appointment.

With regard to the specific information about the named persons (name and surname and five digits of the DNI) the criterion established by the first paragraph of the seventh additional provision of Organic Law 3/2018, of December 5 must be taken into consideration, of Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGG), according to which when the publication of an administrative act containing personal data obeys the purpose of publicity or general knowledge by any person, the identification of those affected will have to be done using the name and surname of the affected person by adding four random numerical digits from the number of their national identity document, the foreigner's identity number, the passport or an equivalent document.

In congruence with this specific provision of the data protection regulations, given that this would be the information that would eventually have to be made public in personnel selection procedures, a criterion that on the other hand is what has been collected in the aforementioned article 21 of the Decree 8/2021, this same criterion should be followed (name and surname and four digits of the DNI number or equivalent) with respect to the specific information to be provided to the claimant.

With regard to the determination of the four random numbers referred to in the seventh Additional Provision LOPDGG, it should be remembered that, provisionally until the rules for the deployment of the said Additional Provision are approved, the data protection authorities have proposed Guidance https://apdcat.gencat.cat/ca/documentacio/guies_basiques/Guies-apdcat for the provisional application of protection guarantees for the of the national identity document, number

foreigner's identity card, passport or equivalent document of the interested parties and, for this purpose, they have randomly determined the group of four digits that must be published for the identification of the interested parties in the publications of administrative acts.

Conclusions

The data protection regulations do not prevent the claimant's access to the list of appointments made in relation to the last grading of February 19, 2019, of people who come from the requested job boards, specifying the job board from which they come, the start and end date of the appointment and, identifying them with their first and last name and four digits of the number of their national identity document determined in accordance with the Guidelines published by the 'APDCAT.

Barcelona, February 25, 2021

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