

IAI 16/2021

**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 for the denial of access to a copy of the file of a selective process at the request of a participating person**

The Commission for Guaranteeing the Right of Access to Public Information (GAIP) asks the Authority Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the denial of access to a copy of the file .../2020, complete, relating to the selection process to provide through the opposition competition system a music teacher job in the City Council's staff, as well as information on the scores of each applicant, the assessment criteria and the application of the criteria to the individual result of each of the qualifications.

After analyzing the request, which is accompanied by a copy of the administrative file processed before the GAIP, in accordance with the report of the Legal Counsel, the following report is issued:

**Background**

1. By Mayor's Decree .../2020, of August 4, the Basis for the selection of personnel to fill a music teacher's job, piano specialty by competition - open competition , at the Municipal School of Music.

2. On August 27, 2020, the claimant submitted a written statement of objections to the City Council against the call, related, among others, to the conditions that applicants must meet or the planned trial period , as well as with "aspects related to the personal and professional circumstances of the signatory as a possible applicant". By Mayor's Decree .../2020, of August 28, several material errors in the call are corrected.

3. On November 6, 2020, the claimant submitted to the City Council a request for access to information about the selection process in which she participated, with file number .../2020, with the following content :

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1. The justification of each of the scores of each test and of each applicant who incorporates:
    - a) the material or sources of information that have been taken into account to issue the technical judgement;
    - b) the criteria of the qualitative assessment;
    - c) how the application of the aforementioned criteria determines the specific individual result of each of the qualifications.

2. Copy of file no. .../2020 complete, including the nominative documents of the other applicants for the selection process."

4. The file contains a copy of the Mayor's Decree .../2020, of November 25, by which the City Council forwards to interested parties the request for access to the complainant's information.

5. It is stated in the file a copy of the Mayor's Decree .../2020, of December 18, 2020, that resolves the claimant's request in the following sense: "give the interested party the transfer of the file .../2020, anonymizing the personal data and excluding the psychotechnical test." There is also no copy of the information contained in the .../2020 file, in which the City Council would have incorporated certain personal documentation relating to applicants in an illegible format, so that no personal data can be viewed, nor the type of document it is.

6. On January 5, the applicant submits a claim to the GAIP, against the City Council. On January 8, 2021, the GAIP communicates the claim to the City Council, and requires it to issue the corresponding report, a copy of the complete file, as well as the identification of the third parties affected by the access that is claims, if any.

7. On January 15, 2021, the claimant submitted a statement of objections to the GAIP, according to which the City Council had sent her the "complete piano\_ process file" on January 12, 2021. The claimant considers that the shipment "does not correspond to all the information requested."

According to the claimant, information from point no. 1 of the request of November 6 ("justification of each of the scores of each test and of each applicant (...)" ), and adds that "only the numerical scores appear in the minutes of the court."

With regard to the file that the City Council would have sent to her regarding the call file, the claimant requests that the following documentation from the file "that still needs to be delivered" be transferred to her (point 2 of the allegations of January 15, 2021):

- "1. The description of the technique that has been followed for the evaluation of the psychotechnical tests: name of the tests carried out, evaluation criteria and procedures and methodology used.
2. The results of my 2 psychotechnical tests with the corresponding evaluation reports.
3. The copy of the answer sheets of the psychotechnical tests of all applicants, anonymizing the data necessary to comply with the data protection law.
4. The individual evaluation of each member of the court awarded to each applicant in each of the tests.
5. Copy of the list of questions asked in each candidate's interview.
6. Evaluation report of each applicant in the interview.
7. Evaluation reports of the court advisers present at the tests (except for the psychotechnical report of the other applicants).

8. Any other internal report, opinion, draft that has been used to evaluate each of the tests carried out by the applicants.

9. The breakdown of the merit count of each applicant according to the criteria of the sixth base of the call.

10. The documentation relating to the request for appointment and the proposal of the member of the qualifying board proposed by the School of Public Administration of Catalonia.

11. The justification for the non-attendance of Mrs. (...) and Ms. (...), titular and substitute members, respectively, designated by Mayor's Decree ... of September 8, 2020.

12. The mayor's decree of 24/09/2020 in which the members of the qualifying court are modified.

13. The minutes and proof of receipt of the notification of the transfers of the decree of 09/24/2020 to the new members, Mrs. (...) and Ms. (...).

14. The justification for the non-attendance of Ms. (...), titular president of the qualifying court, in the tests on 09-29-2020.

15. La documentació acreditativa dels nivells de llengua catalana i castellana exigides a la convocatòria de l'aspirant (...).

16. Economic amount received for the advice of the qualifying court by the ladies (...), (...) and (...).

17. The allegations presented in the Announcement of 10/21/2020 of the total results of people aspiring to be a piano teacher; in the Announcement of 22/10/2020 corresponding to the definitive provision of a piano teacher in the Announcement of 28/10/2020 corresponding to the proposed resolution of a piano teacher; in the Announcement of 02/11/2020 corresponding to the appointment of labor person

18. If it has been done, recording of the personal interviews held with the applicants."

8. On January 21, 2021, the GAIP informs the City Council that the claimant has submitted allegations and asks it to issue the corresponding report. The file contains a copy of the Mayor's Decree of February 4, 2021, according to which the City Council would have already transferred to the interested party "all the documentation that the Court provided and that is in the file."

9. The file contains a copy of the Mayor's Decree, dated February 1, 2021, by which the City Council communicates to the GAIP the contact details of the four people affected by the claim, which are the four admitted people to participate in the selection process. It is stated in the file that this communication would have been made to the interested persons, and that the GAIP would have also communicated to the four affected persons the filing of the claim against the City Council.

10. The file contains a copy of the Mayor's Decree of February 4, 2021, according to which the City Council decides to consider an allegation of the claimant "relating to the exclusion of the psychotechnical test in the documentation provided and transfer to the GAIP the answer sheet of the interested party, as well as the report of the results of the psychotechnical evaluation so that it can be provided to the interested party." On February 5, 2021, the City Council will send the documentation to the GAIP

indicated On February 12, 2021, the GAIP informs the City Council that the information estimated by the City Council is being transferred to the claimant (psychotechnical test of the claimant herself).

11. On February 5, 2021, the claimant submitted another letter to the GAIP according to which: "a more thorough review of the documentation delivered on 01-12-2021 by the City Council (...) has allowed me to verify that, in addition to the information/documentation listed in the letter of allegations presented to the GAIP on 01-15-2021, there is also missing:

1. The documentation relating to the certificates of sexual offenses and criminal offenses of the applicant (...)"
2. Taking into account that the repertoire of the 3rd test of the opposition was of free choice by each applicant, the information on what was the piano repertoire presented and performed by each applicant in said test held on 25-09 -2020.
3. If they have been made, the recordings of the 3rd test (interpretation of a repertoire) and of the 4th test (teaching a practical class) made by each of the applicants.
4. Taking into account that pages 5 to 15 of the file correspond to another selective process of the City Council (the selection of teachers), the documentation relating to the process specific to the file of the selection of the piano teacher "

12. On February 8, the GAIP demanded that the City Council send the complete file, the object of the complaint, "without distorting any document to prevent its reading", given that previously the City Council would have sent the GAIP file, with part of its content illegible. Likewise, the GAIP requests the City Council if it is inconvenient for the claimant to access the report sent by the City Council to the GAIP on January 13, 2021, as it contains "sensitive information, such as the certificate of criminal and sexual offenses of Mr. (...)." The GAIP reiterates to the City Council the request to send the complete file on February 26, 2021.

13. The file contains the allegations presented by Mr. (...) on February 15, 2021, in which he objects to the communication of his personal data, "beyond those that were published at the time in the various documents of the selection process." In addition, he explains that he did not appear in the selection process, so that "in my case, there is no information of interest to the interested person who requests it."

14. On February 25, 2021, the City Council informs the GAIP that the City Council "already proceeded to deliver all the documentation to the claimant during the various information shipments that have taken place", and adds that with respect to the information provided "which could contain personal data, it was consequently anonymized in order to protect the rights and freedoms of those interested and that the right to access public information does not imply a violation of the privacy of the participants in the process." The City Council reiterates to the GAIP that it does not have additional information linked to this file, and that therefore "we cannot attend to the claimant's new demands due to the lack of more information to provide."

15. The file contains several letters from the claimant to the GAIP, formulated in relation to doubts and queries about the procedure to be followed, about the presentation of new allegations or the deadlines of the procedure, among other issues.

16. On March 9, 2021, the GAIP requests this Authority to issue 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 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 (art. 4.1 of Regulation 2016/679, of 27 of April 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and by which repeals Directive 95/46/EC (General Data Protection Regulation, hereafter RGPD).

Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

### II

By Mayor's Decree .../2020, of August 4, the Basis for the selection of personnel to fill a position of music teacher, piano specialty, by competition - free competition, was approved. at the Municipal School of Music. Subsequently, by Mayor's Decree .../2020, of August 28, several material errors in the call are amended, following the allegations

presented by the claimant (in relation to the professional classification subgroup of the position, and the conditions for passing the probationary period).

By Decree of the Mayor's Office .../2020, of 28 October, one of the participants, who would have obtained the highest score, is appointed to occupy the position as working staff in a trial period. In the same Decree, the claimant, who had been occupying said job, is terminated, and the priority of the labor exchange is approved in the event of any termination or resignation. The file contains documentation relating to the claimant's termination.

Thus, the information requested is within the scope of a selective process to provide, through the competitive competition system, a music teacher job in the City Council's workforce, in which the person would have participated claiming

It is necessary to start from the basis that the data relating to the natural persons participating in the selective process that is the subject of the claim contained in the integral documentation of the call file, constitute personal data and their treatment (art. 4.2 RGPD) , is subject to the personal data protection regime (RGPD).

Article 5.1.a) RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency). In order for this treatment to be lawful, one of the conditions of article 6 RGPD must be met.

As can be seen from the file, one of those admitted to the selection process would have submitted allegations (15.2.2021) explaining his opposition to having his personal data communicated because he did not get to participate. As for the rest of the participants, there is no record of the presentation of allegations, nor that the claimant has consent to access their data.

### III

The record of the selection process for the selection of personnel to cover by competition - open opposition a job position of music teacher, piano specialty, which is the subject of the claim, is "public information" for the purposes of transparency legislation and remains subject to the access regime provided for in these regulations.

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" ( 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".

Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information) ).

According to article 13 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public administrations (LPAC): "Those who, in accordance with article 3, have capacity

to work before the Public Administrations, are holders, in their relations with them, of the following rights: (...)

d) Access to public information, files and records, in accordance with Law 19/2013, of December 9, on transparency, access to public information and good governance and the rest of the Legal Order.

(...).”

According to the information available, the person requesting access to the file of the selective process is a participant in the same process, who, according to article 4 of the LPAC, has the status of an interested person to the extent that she can be affected by the result of the administrative procedure.

As this Authority has highlighted (IAI Report 51/2017), it must be understood that the right of access provided for in the administrative procedure regulations must also be exercised once the respective procedure (initial or administrative appeal) has been completed. while the term for the filing of the administrative appeal or administrative dispute is open.

In short, the access request that is the subject of the report, insofar as the person making it holds the status of interested party in the procedure, and that it would be a procedure that had not been completed at the time of the request (for the possibility of submitting an appeal), must take into account the right of access that regulates the regulations of administrative procedure.

The right of access regulated by the administrative procedure regulations is directly linked to the right of defense of the person concerned. However, this does not mean that this right of access is an absolute right, but that, when it conflicts with other rights, such as the fundamental right to the protection of personal data (Article 18 CE), it will be necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

In fact, the LPAC itself establishes that it is necessary to apply the limitations provided for in the transparency legislation when it regulates the obtaining of copies or access to the file of the persons interested in the hearing procedure provided for in article 82.1. This provision must also be understood as applying with respect to the right of access provided for in article 53.1.a) of the LPAC, and, consequently, what is established in articles 23 and 24 of the LTC.

According to article 20 et seq. of the LTC, the right of access to public information can only be denied or restricted for the reasons expressly established by law. Specifically, and with regard to information that contains personal data, to determine the possibility of access it is necessary to assess the type of data in accordance with the criteria established in articles 23 and 24 of the LTC.

As explained by the claimant, the City Council would have already sent her the file, after anonymizing the data of those affected, including various documentation in an illegible format so that the physical persons it refers to are not identified. Even so, the claimant requests a copy of the complete .../2020 file, that is to say, "including the nominative documents of the other candidates for the selection process" (request of November 6). Subsequently, on January 15 and on February 5, 2021, the claimant addresses written statements of allegations to the GAIP specifying an exhaustive list of documentation that she claims and which, in her opinion, is not included in the file that the City Council would have sent him. We note that point 2.3) the claimant requests a copy of the answer sheets of the

psychotechnical tests of all applicants "anonymizing the data necessary to comply with the data protection law" and in point 2.7 of the allegations of January 15 requests access to the evaluation reports "except for the psychotechnical report of the rest of aspirants".

It is worth saying, in this regard, that the City Council argues that it does not have any additional information linked to the file, so it cannot respond to these new requests for information.

In any case, in view of the information available and for the purposes of interest, the file contains a large volume of personal information of various nature: identification data, the application forms to take part in the call, the documentation proof or proof of merit, provided by each candidate (curriculum vitae, certificates and various academic degrees,

etc.); data relating to criminal offences, deserving of special protection; information on the exercises carried out by the applicants - such as the psychotechnical tests - and the documentation drawn up by the Examining Court in the procedure (lists of those admitted and excluded in each of the phases, copy of the Minutes of the Court dated September 29, 2020 , with the grades corresponding to the tests that have been carried out and the merits, proposed appointment of the selected candidate, etc.), as well as various information on the procedures, communications, notices and announcements made during the selection process.

We note that, in section 4 of the pleadings of February 5, 2021, the claimant requests documentation related to the process in which she participated, since the file includes information related to another the places called for (participating teacher). Since, according to the information available, this information refers to the basis of the call, from the perspective of the protection of personal data there is no disadvantage in facilitating access to this information.

Having said that, it will be necessary to examine the access to the personal information that the claimant requests to know, from the perspective of the personal data protection regulations.

#### IV

With regard to the claimant's access to the personal information that may be contained in the file, it is necessary to take into account the provisions established in articles 23 and 24 of the LTC.

It is necessary to refer to article 23 of the LTC:

"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, 'racial origin, 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 which must accompany the application."

At the same time, article 15.1 of the LT, provides:

"If the requested information contained specially protected data referred to in section 2 of article 7 of Organic Law 15/1999, of December 13, on Protection



of Personal Data, access can only be authorized if there is the express and written consent of the affected person, unless said affected person had made the data manifestly public before access was requested.

If the information includes specially protected data referred to in section 3 of article 7 of Organic Law 15/1999, of December 13, or data relating to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, access can only be authorized if the express consent of the affected person is obtained or if the latter is covered by a rule with the rank of law."

According to article 70.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information: "For the purposes of what is provided for in article 23 of Law 19/2014, of 29 December, it is up to the applicant to provide the express and written consent of the holders of the personal data affected by the requested access. The public administrations can transfer the request and the consent to the person holding the data in order to certify the written consent provided, in case of doubt about its veracity.

It does not appear from the available information that the claimant has the consent of the other affected persons. In fact, it appears in the file that one of the four participants would have made explicit his refusal to communicate his data (allegations presented on February 15).

In the event that the public information requested contains information from specially protected categories, such as health data or data relating to criminal or administrative offenses and convictions, the confidentiality of this information must be preserved and excluded - that of the claimant's access, unless, in the absence of the express consent of the affected persons, which is not included in this case, one of the enabling circumstances provided for in the aforementioned article 15.1 occurs.

In view of the file, it is necessary to refer specifically to the information requested about the performance of the psychotechnical tests of the applicants and which, according to the basis of the call, must contain "attitudinal tests and personality tests with the purpose of accrediting work skills, personal competences and other factors considered relevant for the job."

At the outset, the claimant asks to know "the description of the technique that has been followed for the evaluation of the psychotechnical tests: name of the tests carried out, evaluation criteria and procedures and methodology used" (point 2.1 allegations of January 15). From the perspective of data protection regulations, there would be no disadvantage in giving access to information on evaluation criteria and methodology used by the court, since this information, in the terms requested, would not contain personal data of applicants.

With regard to the personal information that may be included related to these tests, we note that in the initial request of November 6, 2020, the claimant requests the complete file with the "nominative documents" of each applicant. Instead, in the allegations of January 15, 2021 (point 2.3) the claimant requests a copy of the test answer sheets

psychotechnics of all the aspirants "anonymizing the data necessary to comply with the data protection law", and which in point 2.7 of the same allegations, requests access to the evaluation reports of the court advisors present at the tests "except the "psychotechnical report of the rest of the aspirants".

Due to the nature of this type of psychotechnical test, in which various aspects of the applicants' personality can be assessed which can lead to the preparation of a psychological profile on these people, it seems clear that the information contained on the performance or the result of these tests must be considered as specially protected personal information which, consequently, should be excluded from the claimant's access, ex. art. 23 LTC.

Although the claimant requests to know this information anonymously (point 2.3 allegations of January 15), the requested information refers only to two affected people. This, added to the rest of the information available to the claimant, means that anonymization in this case is not a viable mechanism to ensure the privacy of those affected, given the clear possibility of re-identification.

This consideration regarding access to specially protected information could be extended to the test consisting of conducting a personal interview (sixth test), in the event that the purpose of the personal interview is to clarify aspects examined or detected in the psychotechnical test. If this were the case, and the personal interview has the character of concretization or reinforcement of the psychotechnical test, it must be taken into account that the information obtained would be health information, for the purposes of the protection of personal data (art. 4.15 RGPD), so it should be considered specially protected. In this case, the part of the interview related to the psychotechnical test it should also be excluded from access.

On the other hand, in the allegations of February 5, the claimant requests to know the documentation relating to the certificates of sexual offenses and criminal offenses of one of the applicants who did not finish the tests. According to the rules of the call, the applicants had to provide a negative certificate of criminal records and a negative certificate of crimes of a sexual nature (section e) Second basis). It would not be justified to give access to the documentation relating to the certificates of sexual offenses and criminal offenses of the applicant given that regardless of whether or not this can provide information about convictions for crimes, this is a person who has not finished the process selective

It is therefore irrelevant for the defense of the rights of the person claiming or for the control of the administrative action.

In conclusion, the City Council should deny access to the documentation that is part of the call file that contains specially protected personal data, unless it has the express written consent of the people affected.

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Regarding access to the **rest of the information in the file that does not contain particularly protected personal data**, it is necessary to balance the right to data protection of the

affected persons, and the public interest in the disclosure of information in accordance with the provisions of article 24 of the LTC, according to which:

"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 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the affected people 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. (...)."

At the outset, it should be remembered that article 15 of the RGPD regulates the right of access to one's own personal information, so that, in the case examined, the person making the claim has the right to access all the information that about the his person appears in the file processed by the City Council, in relation to the call for personnel selection in which he participated as an applicant.

Regarding this, in the allegations of January 15, 2021, the claimant requests access, among others, to the "results of my 2 psychotechnical tests with the corresponding evaluation reports". Without prejudice to the fact that, according to the available information (point 10 of the Antecedents of this report), it seems that the City Council would have already facilitated the claimant's psychotechnical test, in case she had taken another psychotechnical test it would also be necessary to facilitate - access to him, as well as to the corresponding evaluation of results ("evaluative reports"), since this would be personal information of the claimant herself. The same criterion should be followed for the rest of the claimant's own information contained in the file and that has not been provided to her previously, listed in the claim of November 6 or in the subsequent allegations (15 of January and 5 February 2021).

Having said that, the regulations establish that the selection processes of official and labor personnel in the field of Public Administrations are subject to a series of principles, including those of publicity and transparency (article 55.2.a) ib ) Royal Legislative Decree 5/2015, of 30 October (TRLEBEP)).

Legislative Decree 1/1997, of October 31, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in the field of public service regulates the Title 5 (articles 61 to 70) the provision of jobs, and foresees that the competition constitutes the normal provision system, and that it is carried out through a public call, in which the merits and capacity must be established which must be considered to determine the suitability of the applicants, attending

especially the requirements required according to the characteristics of each job. Likewise, this rule provides for the content and publicity that must be given to calls for tenders, both those for competition and those for free nomination (art. 64 DL 1/1997).

At the local level, article 78 of Decree 214/1990, of July 30, which approves the Regulation of personnel in the service of local entities, provides that: "Once the deadline for the presentation of instances, the president of the corporation, or the authority to which he has delegated, must issue a resolution within a maximum period of one month and must declare the list of admitted and excluded approved. In the aforementioned resolution, the places where the complete certified lists of admitted and excluded applicants are exposed to the public must be indicated."

According to article 80.4 of Decree 214/1990: "4 The final score of the selective tests and the list of passers must be published on the notice board of the local body and an appeal may be lodged against the result (...)."

A staff selection process involves competitive competition, and therefore there is legal authorization to publish lists of admitted applicants (art. 78 Decree 214/1990), and of the people finally selected, as established in the LPAC in connection with the notification of resolutions and administrative acts (art. 40 et seq. LPAC). Article 45.1.b) of the LPAC provides that the administrative acts forming part of a selective or competitive procedure must be published and, in this case, the call for the procedure must indicate the means by which will carry out the successive publications.

With regard to the legal authorization for the active publication of this information, article 9.1.e) of the LTC, refers to the publication of calls for proposals and the results of selective processes for the provision and promotion of personnel .

Article 21.1 of Decree 8/2021 provides that for the purposes of Article 9.1.e) LTC, public administrations must publish the calls for proposals and the results of the access procedures to the bodies and ranks of official, statutory and personnel, internal promotion procedures, provisional and definitive provision procedures, and procedures for the selection of temporary or temporary staff, including temporary staff exchanges, among others. Section 2 of the same article 21 provides that:

"2. The data to be published must refer, at least, to the announcement of the call, the rules, the official announcements and the first and last names and the four numbers of the national identity document or equivalent document of the admitted persons in 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.  
(...)."

In this sense, the bases for the call for the selective procedure object of the claim provide for the publication in the BOP and the DOGC, in the electronic headquarters of the Corporation and in the edicts desk, of the bases and the call. The ninth base provides that in accordance with the provisions of articles 92 and 78 of Decree 214/1990, communications will be made through the corresponding publication on the Corporation's notice board. In the basis of the call, the personal identification data of the members who make up the selection board are also made public, and it is included in the file a copy of the different proceedings, mayor's decrees and announcements relating to the differer

phases of the process (lists of admitted and excluded, results of the different phases and scores obtained and proposal for appointment, announcements of tests, etc.).

Thus, the call, the lists of admitted and excluded, the members of the selection board, the changes that have occurred, if applicable, in the designation of these, the grades of the tests carried out and of the merits, the list of the people who have passed the selection process (in this case, the person proposed by the court to fill the position and the two people who join the job board "by strict order of points" according to the seventh Base (in second place, the claimant), the announcements made by the City Council throughout the process, are procedures of the personnel selection process that contain personal data that are the subject of publication.

For all this, at the outset, it does not seem that facilitating access to the information that has been the subject of dissemination during the course of the selection process that may be included in the file should have particular relevance in terms of the right to protection of personal data of the affected persons, particularly in this case where the person requesting access has participated in this selective process, so it is likely that it is already known to them.

Likewise, in view of the provisions of paragraph 1 of article 24 of the LTC (and art. 70.2 Decree 8/2021), there would be no inconvenience in facilitating access to that documentation that may be contained in the file, which contains merely identifying data directly related to the functioning, organization or activity of the convening body (for example, the changes that have occurred in the composition of the court, or the non-attendance of a member of the court to a test of the selective process) unless there is some exceptional circumstance in the person concerned, but not with respect to the justification of the absence.

Thus, in principle there would be no problem in the City Council, if it has it, providing the documentation that the claimant refers to in sections 10; 11; 12 and 13 of the allegations of January 15, 2021.

## VI

With regard to the rest of the information linked to the **people who have participated in the selection process apart from the claimant**, paragraph 2 of the mentioned article 24 of the LTC is applicable, therefore, for the purposes to grant access, a reasoned weighting must be done between the public interest in the disclosure of the information and the rights of the persons affected.

The weighting must take into account whether the communication can be relevant, in some sense, for the "fulfillment of public interest objectives for the benefit of all citizens" that must be pursued, among others, by public administrations, such as and as set out in the Preamble of the LTC.

Without prejudice to this, it is also necessary to examine whether there is a particular interest or legitimate purpose on the part of the claimant, which could justify access to all or part of the information requested.

As has been stated, the claimant would have participated in the selective process of access to the position of piano teacher, and would have obtained the third best qualification, going on to occupy the second place on the job board. In this sense, the status of interested party that the person making the claim has with respect to the selective procedure grants them a reinforced or privileged right of access with respect to potential applicants for information who have not participated in that selective process.

In this sense, article 22.1 of the LTC provides that: "The limits applied to the right of access to public information must be proportional to the object and purpose of protection. The application of these limits must take into account the circumstances of each specific case, especially the concurrence of a higher public or private interest that justifies access to the information."

Although the LTC does not require the information requester to state the reasons justifying the exercise of the right of access to public information (art. 18.2 LTC), the purpose of the access is one of the circumstances that article 24.2 of the LTC establishes as a weighting criterion.

The private or particular dimension of the right of access to public information is specified by allowing people to access information that may be relevant to their sphere of particular interests and, in this sense, the purpose of access plays an essential role at the same time as weighing between the different rights at stake. In fact, the private interest is already provided as a weighting criterion (art. 15.3.b) LT, establishing that it is necessary to take into consideration "The justification by the applicants of their petition in the exercise of a right (...)."

In the case at hand, knowing the motivation and purpose of the access is an element to be taken into account, for the purposes of weighting the access to personal information of the other people who participated in the selection process together with the claimant.

The final list of admitted applicants includes five applicants, including the claimant (Resolution of September 25, 2020). One of the applicants submitted allegations on February 15, 2021, in which he objects to the communication of his personal data, precisely because, as he explains, he did not appear in the selection process. Another of the applicants did not finish the selection process.

The claimant motivates her request for access to the complete file by being able to assess whether there were irregularities or arbitrariness in the selection process in which she participated, which would have directly harmed her and the possibility of taking legal action in relation to the selection process. Likewise, the claimant points to possible reasons for recusal on her part with respect to members of the court, since during the course of her employment relationship with the City Council as a music teacher and occupying the appointed position, "I have received on several occasions a treatment that I consider humiliating on the part of people from this City Council, even in writing, people who can just now be part of the Court evaluating the call. (...), I have filed claims and several demands against this City Council in defense of my rights and my personal and professional dignity, demands and claims in which I specifically targeted several people from this entity."

For the purposes of the aforementioned weighting, as can be seen from the allegations presented by the claimant (letter of August 27, 2020), she would have held the position of music teacher subject to the selection process, and would be currently on leave.

The claimant points to a certain animosity towards her person on the part of people participating in the selection process, and possible arbitrariness on the part of the court during the selection process and in the result thereof, unfavorable for the claimant.

Because of all this, it seems clear that the claimant bases the access on a personal or particular interest, given her previous employment relationship with the City Council and her status as a participant in the selection process.

When weighing the rights at stake, the principle of data minimization (Article 5.1.c) RGPD) must be taken into account, according to which the data to be processed must be adequate, relevant and necessary for the fulfillment of the purpose according to which the access occurs, in this case transparency in the selective process. For weighting purposes and in accordance with this principle, a clear distinction should be made between the personal information related to the candidates who passed the opposition or who, at least, obtained a better result than the claimant (in this case, the person proposed by occupy the position of teacher and the person who would occupy the first position on the job board ahead of the claimant), of the information relating to the rest of the participants in the procedure who did not pass the selection process.

Having access to certain information about the qualifications of other candidates who would have had better qualifications than the claimant may be justified, in relation to the detection of possible favors that could have harmed the claimant. Therefore, determined information about candidates who obtain the offered position or are in a better position than the claimant, may be relevant to the particular interest pursued by the claimant.

On the contrary, it does not seem justified to give access to the personal information of applicants who have not passed the competitive procedure or have not participated in all the tests, since this information would be irrelevant to achieve the purpose pursued by the claimant (detecting a lack of transparency in the process, or favors or irregularities on the part of certain evaluators that could have caused damage to the claimant), and does not seem justified the impact on their right to the protection of personal data (given the volume of academic and professional information included in the file, which makes up a fairly complete profile of the applicant), given the claimant's interests in demonstrating a detriment or arbitrariness in not having obtained a position that these two people have not obtained either.

It is not clear, in this sense, what effect access to personal information (certificates and diplomas, academic and employment information, curriculum vitae,...) can have on the control of the actions of the Administration responsible for the competitive procedure. of people who have not been finally selected for the position, or who have not obtained a score higher than that of the claimant.

Therefore, given the weighting of Article 24.2 LTC, from the perspective of data protection it does not seem justified to give access to the information, documentation, reports or evaluations that may be contained in the file relating to applicants not selected in advance of the claimant.

The claimant also requests to know the "financial amount received for the advice of the qualifying court by the ladies (...)" (section 2.16 of the allegations of January 15), in reference to the people who would have acted as advisers to the court and to the person in charge of carrying out the psychotechnical test. They are in the file a copy of mayoral decrees referring to the granting to the external staff of the Corporation that was part of the Court, of the corresponding indemnities by reason of service according to what is provided for in Royal Decree 462/2002, of May 24 , in which only the name and surname of the member of the court and the amount received are indicated.

According to article 11.2 of the LTC, the information relating to economic and budgetary management that the Administration must make public in application of the principle of transparency must include, among others: "e) The general information on the remunerations, compensations and allowances received by public employees, grouped according to the levels and bodies.". This means that certain general information, and not individualized for each member of the court, would need to be provided through active publicity and for the purposes of controlling budget management (art. 11 LTC). This information, or the offer of the overall amount received by all the members of the court, already allows an assessment of the general cost that the action of the selective body may have, without the need to individualize the information.

On the other hand, for weighting purposes, it does not seem justified to access specific information in relation to certain members of the Court, since the individual collection of allowances by some member would not be relevant to the purposes that the claimant can exercise the defense of their rights in relation to the selective process. Therefore, from the perspective of data protection, it would not be justified to give access to individualized information on the collection of allowances, without prejudice to the information that must be provided through active advertising.

## VII

Having said that, with respect to the **documentation relating to the two people who obtained a better result than the claimant** (the candidate who would have been finally selected and the person who would occupy the first place in the interim list ahead of the claimant, from perspective of the weighting of article 24.2 LTC, the analysis must be different.

At the outset, the claimant requests (application of November 6 and allegations of January 15), the "justification of each of the scores of each test and of each applicant (...)." In point 2.8 of the allegations of January 15, the claimant requests "any other internal report, opinion, draft that has been used to evaluate each of the tests carried out by the applicants."

For the purposes of control over the actions carried out by the Administration in the field of the selection process, which is governed by the principles of merit, ability and equality, it may be relevant, with respect to the candidate finally chosen, to know the acts of evaluation or equivalent documents evaluation of the merits, as well as the evaluative elements that the court has taken in relation to these people. Thus, it would be justified to facilitate the score obtained by this selected candidate in relation to the alleged merits or the curricular or professional aspects that the court has assessed. The same consideration can be made regarding the other person who would have scored better than the claimant and therefore the first place on the job board, since that person has obtained a better result than the claimant.

Knowing the score obtained by the two people in a better position than the claimant in the final results of the process, in relation to professional experience, academic training or in relation to the tests carried out, would provide sufficient information if what is intended is to detect possible arbitrary actions by the body in charge of making the selection, which should act within the parameters of technical discretion attributed to it.



Specifically, with regard to the **curricular documentation** of these two participants, despite the fact that it may contain personal information of a different nature that may allow the elaboration of an academic, work and professional profile of the candidates and, therefore, facilitate it would entail a strong impact on your right to the protection of personal data, in a case such as the one examined, it must be considered that your knowledge, together with the identity of the two candidates, is indispensable to be able to defend your rights with regard to the legality of the selection process and to be able to detect, where appropriate, an arbitrary treatment in the assessment of this profile, which could have harmed the interests of the claimant.

This, without prejudice to the fact that if this documentation contains other personal information that is not relevant to achieve the intended purpose, it should be excluded from access.

For example, the documents contained in the file about the two candidates we are referring to (applications for participation in the selection process, affidavits, diplomas and certificates, academic and work information, etc.), provide detailed information about the profile, training and professional career of a candidate, as well as other aspects of skills and competences required for the development of the job offered, but also identifying data (address, DNI, telephone, social security number, date of birth...) that are not relevant for the purposes we are concerned with, taking into account the principle of minimization (art. 5.1.c) RGPD). In short, it may be relevant to know the data that allows you to accredit the merits assessed by the court, but not other personal data that do not provide relevant information in relation to the assessment of these merits.

Thus, taking into account that access must be limited to the information strictly necessary to provide a satisfactory response to the exercise of the aforementioned legitimate purpose (exercise of the claimant's rights as an interested party), access to the CVs of two affected should be limited to the data relating to training, professional experience and other occupational data that have been taken into account in the assessment of the merits of these candidates. It will therefore be necessary to omit, prior to access, the personal data (identification or other categories) of the two selected with a better score than the claimant, which are unnecessary, irrelevant or not indispensable for the purpose pretend

With regard to **access to the evidence that makes up the** call file and the court's qualifications, it also seems clear that access to this information may be relevant to the defense of the claimant's rights.

With regard to the test of the personal interview, initially, given the terms of the request for information (points 2.5 and 2.6 of the allegations of January 15), which the Act records that, with regard to the test of the curricular interview "the court agrees in advance on some questions pre-established by its members (...)", which are listed in said minutes. There would be no disadvantage in facilitating these questions, which otherwise would already be known to the participants.

Having said that, in the documentation provided by the GAIP together with the report request (copy of the minutes of the Selection Court, of September 29, 2020), the criteria established by the Court for the interview are specified to all the candidates, which are specified in a grid that collects, for each of the applicants with a score relative to the analyzed items ("coherence in speech, expository ability, job stability, self-control ability and command of the situation, sincerity, conviction, communication skills, negative reaction to the questions asked,

professional security and firmness in the position, ability to interrelate, ability to dialogue in the face of conflict, adequacy of the register used, interest, clarity of ideas, attitude and availability, consistency, degree of knowledge of the functions, balance in adaptation with students, precision in language, ability to respect limits"). It cannot be ruled out that, as this test is configured, the interview includes an evaluation of certain traits or aspects of the candidates' personality and professional development or capacity.

However, it cannot be considered that a professional interview must contain particularly protected information, unless, as has been said, this interview aims to determine the psychological assessment of the candidate, based on the psychotechnical test.

Outside of this case, which would mean the exclusion of access to the personal interview ex. art. 23 LTC, it does not seem that giving the claimant access to the "Evaluation report of each applicant in the interview", only in relation to the two participants with the highest score, should be contrary to the data protection regulations including, if available, access to the content of the interviews (point 2.18 of the allegations of January 15, 2021). In this case, in the weighting that must be done, it must be taken into account that, according to the basis of the call, in this interview several factors that can be qualified as professional and teaching (communication skills) must be assessed and ability to exhibit, ability to relate, skills in the field of teaching, etc.), rather than issues of a personal nature unrelated to the labor sphere, which could more intensely affect the candidates' privacy.

Taking this into account, the recording would complement and contrast what can be known through the corresponding report and, ultimately, the assessment made by the Court. This ability to contrast that the recording would give in relation to the professional, teaching and communicative capacity of the two participants with the best score, means that it can be considered relevant information for the purpose intended by the claimant.

As for the third test (interpretation of a repertoire, which according to the rules "It will consist of the musical interpretation with a duration of between 5 and 10 minutes, with a free program of difficulty level from the second cycle of professional degree . Each participant must deliver three copies of the scores to the Court"), and in the fourth, practical test ("The applicants will demonstrate their musical knowledge and their pedagogical ability by giving a class to one or more elementary level students") it does not seem that there should be any inconvenience, for the purposes of the aforementioned weighting, in providing the claimant with the information she requests (paragraphs 2 and 3 of the pleadings of February 5, 2021), that is to say, the piano repertoire and, if it has been carried out, the recording of both tests of the two candidates. Given the characteristics of the third and fourth tests, knowing the development of both tests does not seem to have a significant effect on the right to data protection of those affected since they are tests (especially the repertoire interpretation) that it may be common for candidates to perform with audience assistance.

Jurisprudence has considered that the principle of publicity and transparency is essential to guarantee the principle of equality that must govern any competitive competition procedure. In this regard, it has been pronounced, for example, the Judgment of the Supreme Court of June 6, 2005 (rec. 68/2002):

"... That fact is already significant by itself since, thanks to it, the Parliamentary Administration knows from the first moment that the applicant is not an ordinary citizen, but presents the singular condition of having been a party to the procedure in what those documents will generate. And, in addition, the Administration also knows that one of them wrote it himself and that the rest served, together with his, for the Court to decide on the qualification that each one deserved, depending directly on it the award of the four places in dispute (...). The Chamber considers that, if the legitimate and direct interest referred to in article 37.3 of Law 30/1992 is measured by the possibility that access to the documents will give the person who claims it a benefit or advantage or serve to avoid or reduce a loss, it is evident that Mr. José puts it. So much for the mere effect derived from the knowledge of the content of those documents, decisive to explain the result of the opposition, as because, in function of the same, although I can no longer file an Administrative Appeal against the resolution that put an end to the selection process, that it does not mean that he does not have other legal avenues at his disposal to react against what he understands to be unfair.

Faced with what has been said, it is not possible to oppose, as does the Letrado of the Cortes Generales, the consequences that could occur depending on the use that the appellant makes of the knowledge he will obtain and the copies he will receive. The actor himself will certainly be responsible for this, but there is no reason to presume that he will conduct himself in an illegal manner. On the other hand, it must be taken into account that the exercises were read in public and that, as pointed out by the Attorney General of the Cortes Generales, if a Contentious-Administrative appeal had been filed, the appellant would have had all the exercises at his disposal. Likewise, it should be emphasized that the Parliamentary Administration has not asserted, as it should have been precise, because it is required by article 37.4 of Law 30/1992, interests of third parties more worthy of protection or legal norms that prevent this access.

All this confirms that there is no reason in its content that hinders the access of Mr. José to these documents. And as for the functional consequences that could have for the Administration the possibility that the procedure that we contemplate here is generalized, we must reiterate that we cannot handle future hypotheses. On the other hand, the same article 37 and the rules and general principles of the order offer means to deal with requests that affect the effectiveness of public services or that, due to their absurd, disproportionate or contrary to good faith, should not be attended to. Circumstances all absent from the claim made in this appeal."

In the same sense, we refer to the Judgment of April 26, 2012, of the First Section of the Administrative Litigation Chamber of the National Court, in relation to the transfer of data of the qualifications awarded in the framework of selective processes .

Therefore, and without prejudice to the fact that there is data that is not relevant for the verification of compliance with the requirements established in the call or for the evaluation of applicants, which must be excluded from access, the right to data protection would not prevent obtaining a copy of certain information included in the CVs or exercises or tests of the people who have participated in the call and have obtained a higher assessment than the person requesting access.

These considerations should tip the balance in favor of the claimant's right to access the tests, exercises and qualifications of the two referred persons and in the terms indicated, since this information may be relevant for the verification and control of the action of the administration responsible for the selection process, excluding that information relating to tests which by their nature, as we have seen, may contain specially protected data (psychotechnical test and, where appropriate, the parts of the personal interview that have for the purpose of specifying or contrasting certain aspects of the applicants' psychological profile, detected as a result of the psychotechnical test).

All this, without prejudice to the fact that certain personal circumstances of the two candidates could justify the limitation of the claimant's right of access. In any case, although it is known that the provision of article 31 LTC has been complied with, as has been said, it is not known that these people have submitted allegations.

### **conclusion**

The data protection regulations do not prevent the person claiming access to the information contained in the file of the call in which they have participated, relating to their person (ex. art. 15 RGPD), as well as to all that documentation that has been the subject of publication in accordance with current regulations regarding other participants.

The data protection regulations do not prevent access by the person making the claim to the personal data of the two applicants who have finally passed the selection process (people proposed to occupy the position and the first position on the job board ), excluding documentation that contains specially protected personal data, as well as those identifying or other data that are unnecessary to achieve the purpose pursued.

The data protection regulations do not prevent access to the merely identifying data of the positions or public employees that in the exercise of their functions may appear in the different requested documentation (art. 24.1 LTC). On the other hand, access to the individualized diets of members of the court is not justified, nor to the reasons or justification for the absences or substitutions of members of the court.

The claimant's access to the requested information relating to both is not justified applicants not selected, in relation to the alleged merits and the tests they may have performed in the selective process subject to complaint, or other available documentation, except for that which has been the subject of publication in accordance with current regulations.

Barcelona, April 20, 2021