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**Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim presented by a staff representative against a city council for the denial of access to the file corresponding to the selection process of a general administration technician career position**

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 City Council for the denial of access to the file corresponding to the selection process for a general administration technician career position.

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

**Background**

1. On July 12, 2019, and according to the file, the staff delegates of a trade union section at the City Council (...) present to this council an instance of access to information in the terms next:

"They state: That on October 26, 2011, part of the tests for the selection process for a position of General Administration Technician (TAG) were carried out, and given that having seen the BOPB it has been observed that they produced irregularities.

Request: View and copy of the file, of the final minutes signed by the members of the court, and of Decrees no. 573/11, 598/11 and 639/11, of the selection process for a position of TAG of the City Council (...), in accordance with article 40 of Royal Legislative Decree 5/2015, of 30 of October, by which the revised text of the Law on the Basic Statute of the Public Employee (EBEP) is approved."

2. On January 27, 2021, one of the staff representatives, faced with the lack of response to the request for access to the requested public information, presents a claim to the GAIP against the City Council.

3. On February 5, 2021, the GAIP will send the claim to the City Council, requiring it to issue a report on which to base its positions, as well as the complete file relating to the request for access to public information and the identification of third parties affected by the requested access.

4. On February 8, 2021, the GAIP requires the claimant to certify her status as a staff delegate. The file contains a copy of the claimant's designation as a trade union representative representing the Trade Union Section (...) at the City Council.

5. On March 16, 2021, the City Council forwards to the GAIP the report issued by the Accidental Comptroller Secretary in relation to the claim presented, in which it is stated that:

"There is a letter of response from the Mayor dated 30-1-2020 to the instance presented by the representative of the official staff (...), in which she states that this file has been the subject of a request for analysis to the services of Legal assistance of the Diputació de Barcelona on the object of the challenge they have presented.

The City Council is currently waiting to receive the report requested to respond to the union instance.(...)"

At the date of issue of this report, this Authority has no evidence that the City Council has solved the request for information presented by the staff delegates.

6. On March 25, 2021, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

## Legal Foundations

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, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (article 4.1 of Regulation 2016/679, of April 27, 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

The object of the complaint is, as can be seen from the statements of the complaining party and the set of information contained in the file, access (and copy) to the file of the selection process carried out I in 2011 to provide a general administration technician career position (TAG) at the City Council (...).

The claimant also refers to the final minutes signed by the members of the Court qualifier and Mayor's Decrees no. 573/2011, 598/2011 and 639/2011 issued as part of this procedure.

In accordance with the information published on the process in question in the transparency headquarters by the same City Council (...), as well as in the BOP (<https://bop.diba.cat/>), Mayor's Decree 573/2011 corresponds to the provisional list of those admitted and excluded from the tests for the selection of personnel in the TAG position; Mayor's Decree 598/2011 corresponds to the definitive list of admitted and excluded to said selective process; and, the Mayor's Decree 639/2011 corresponds to the appointment as a career official of the person who passed the selection process, which literally includes the minutes drawn up by the Secretary of the qualifying court in which the competition is assessed of all applicants.

Apart from this information, to which the complaining party refers in particular, it can be assumed that the file will also include, among others, the applicants' requests for participation, any tests carried out and the documents that the participants could present evidence of the alleged merits.

So, we will start from the fact that the requested file may contain a lot of information referring to the people participating in the selection process, in addition to the data of the public employees responsible for its processing and resolution.

Article 4.2) of the RGPD considers "treatment": any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction."

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimation of data processing that is based on the

need for one of the legal bases established in article 6.1 to apply. Specifically, section c) provides 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".

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.c) has to be established by the Law of the European Union or by the law of the Member States that applies to responsible for the treatment.

The referral to the legitimate basis established in accordance with the internal law of the Member States concerned reference this article requires that the rule of development, when dealing with protection of personal data of a fundamental right, has the status of law (Article 53 CE), as it has come to recognize article 8 of Organic Law 3/2018, of December 5, on data protection personal data and guarantee of digital rights (hereinafter, LOPDGDD).

For its part, article 86 of the RGPD provides that "personal data from official documents in the possession of some public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, organism or entity in accordance with the Law of the Union or of the Member States that they are applied in order to reconcile public access to official documents with the right to protection of personal data under this Regulation."

Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC recognizes the right of people to "access public information, which does reference article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1).

Article 2.b) of the LTC defines "public information" as "the information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions, including that supplied by the other subjects bound by agreement with what this law establishes".

The record of the call for the selective process object of complaint is public information for the purposes of article 2.b) of the LTC and, consequently, remains subject to the regime of the right of access (article 18 LTC).

The first additional Provision, section 2, of the LTC provides that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law. "

It is stated in the file that the person who presents the claim does so as a staff representative of the City Council.

This is a relevant question, given that they are the boards or staff delegates (article 39 of Royal Legislative Decree 5/2015, of October 30, approving the revised text of the Law on the Basic Statute of the Public Employee (TRLEBEP)), as well as the Company Committee (article 63 of Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law (ET)), the specific bodies representing civil servants and workers

public with employment contracts respectively and, as such, exercise the functions granted to them by the corresponding regulations (articles 40 TRLEBEP and 64 ET).

In this case, the workers' representatives have a specific right of access to information provided for in articles 40 of the TRLEBEP and 64 of the ET, and, consequently, it is these rules that must be applied as a matter of priority, without prejudice to the supplementary application of the access regime provided for in the transparency legislation.

### III

Article 40 of the TRLEBEP, relating to the functions and legitimacy of the representative bodies, provides:

"1. Staff boards and staff delegates, if applicable, have the following functions, in their respective areas: a) Receive information on staff policy, as well as on data relating to the evolution of remuneration, likely evolution of employment in the relevant field and performance improvement programs. (...) e) Monitor compliance with current regulations regarding working conditions, prevention of occupational risks, Social Security and employment, and exercise, if necessary, the appropriate legal actions before the competent bodies. (...)"

TRLEBEP grants personnel delegates the function of receiving information on the evolution of personnel policies (letter a)), as well as monitoring and controlling compliance with current employment regulations (letter e)) . These, as workers' representative bodies, they must be able to access the information available to the City Council that is necessary for the exercise of their functions, information that could contain personal data of the workers.

With regard to labor personnel, article 64 of the ET attributes to the Works Council and by extension also to the staff delegates (article 62.2 ET) the right to be informed "(...) on those issues that may affect the workers, as well as on the situation of the company and the evolution of employment in it, in the terms provided for in this article." Adding that information is understood as "the transmission of data by the employer to the works committee, so that it has knowledge of a certain question and can proceed to its examination" (article 64.1 ET). Section 7 of this same precept also attributes to the representative bodies the function, among others, of "monitoring the fulfillment of the current rules in labor matters, of Social Security and employment, as well as the rest of the pacts , company conditions and usages in force, formulating, as the case may be, the appropriate legal actions before the employer and the competent bodies or courts."

Both legal texts recognize the function of surveillance in compliance with current employment regulations to the representative bodies. The TRLEBEP adds, in addition, the right to receive information about personnel policies.

The eventual access to the personal information of the workers by their representative bodies should, in any case, be authorized in this function of monitoring the rules in force.

However, beyond this, there is no other specific provision that is directly related to the personnel selection processes for the provision of jobs.

In view of this, apart from the provisions of the specific access regime (TRLEBEP and ET), it will be necessary to take into account the provisions of the transparency legislation, the purpose of which is, as can be seen from article 1.2 LTC, to establish a system of relations between people and the public administration and other obliged subjects, based on knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and of responsibility in public management.

In this context, if citizens should be able to have this ability to control and request accounts to the Public Administrations, with more reason, if applicable, it is necessary to recognize this capacity to the workers' representatives, in the case at hand, to the staff representative.

#### IV

The right of access to public information (Article 18 LTC) is not absolute and may be denied or restricted for the reasons expressly established in the laws (Article 20 et seq. LTC). 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.

At the outset, from the point of view of data protection, there would be no disadvantage in facilitating access (and copying) of the person making the claim to that information or documentation of the file of the selective process subject to the claim in which no contain personal data (Article 4.1) RGPD), such as, for example, statements of exercises, the criteria for correction and assessment of these exercises or other type of response template prepared as part of said process, as well as any other documentation or material that has been used as a reference for that purpose, or the criteria and scales set for the evaluation of merits.

With regard to the personal information contained in said file, in the absence of having the allegations that could have been formulated by the affected persons - to whom the request and/or claim should have been forwarded in accordance with articles 31 and 42 of the LTC - and lack also to know, with accuracy, the specific data contained therein, it should be noted that, in general, access to specially protected data that can be included in the file (Article 9 RGPD).

In this sense, article 23 of the LTC, relating to personal data deserving of special protection, provides that:

"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 involve

the public admonition to the offender, unless the person affected expressly consents to it by means of a letter that must accompany the application."

In similar terms, article 15.1 of Law 19/2013, of December 9, on transparency, access to public information and good governance, in its wording given by the eleventh final provision of the LOPDGDD, provides that:

"1. If the requested information contained personal data that reveal ideology, trade union affiliation, religion or beliefs, access can only be authorized in case that 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 personal data that refer to racial origin, to health or sexual life, includes genetic or biometric data or contains data relating to the commission of criminal or administrative offenses that did not involve the public reprimand to the offender, access can only be authorized if with the express consent of the person affected or if he was covered by a rule with the rank of law."

In the files relating to selective processes, it cannot be ruled out that there are data deserving of special protection, either because they have been provided by one of the candidates (for example, disabilities, need to adapt certain tests, etc.) or either as a result of any of the tests carried out (for example, psychotechnical tests involving the assessment of aspects of personality, including, where appropriate, personal interviews).

In the specific case, and from the information available, it does not appear that there is a reserve shift for applicants who have a recognized disability equal to or greater than 33% in relation to the TAG position subject to provision. The existence, if this were the case, of this restricted access route could justify the claimant's access, as a staff representative, to the information about which applicant has chosen to access this access route.

However, it cannot be ruled out that the file in question may contain information deserving of special protection as a result of some of the tests carried out as part of the selection process, mainly given the provision in the bases that govern the process of conducting a personal interview with applicants.

In the event that the performance of this test (or any other) reveals specially protected information, its confidentiality must be preserved, unless the express consent of the affected persons was provided with the request or that any other of the enabling circumstances provided for in article 15.1 of Law 19/2013, cited. If none of these circumstances occur, the right to data protection would prevail over the right to access information.

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In relation to the rest of the personal data that may appear in the aforementioned file that no have the consideration of specially protected data, it will be necessary to adhere to the established in the 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 contain merely identifying personal data unless, exceptionally, in the case specific should the protection of personal data or other constitutional rights prevail protected

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, i the guarantees offered.
  - c) The fact that it is data relating to minors.
  - d) The fact that it may affect the safety of people.
- (...)"

Section 1 of this precept of the LTC allows access to the merely identifying data of public employees who intervene by reason of their functions in the different procedures or public actions carried out by the Administration, unless specific circumstances arise that justify the prevalence of the right to data protection of the person or persons affected.

In this sense, article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, Decree 8/2021) specifies what is meant by personal data merely identifiers in the following terms:

"For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and addresses, postal and electronic, of professional contact, referring to staff in the service of public administrations, senior positions and managerial staff in the public sector of public administrations.

In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature. If the signature is electronic, the electronically signed document must be published in such a way that the properties of the electronic certificate used for the signature cannot be accessed.

The location data must be deleted in the event that it is not merely identifying data of the author in his position of position or staff in the service of public administrations."

Therefore, facilitating the claimant's access to the merely identifying data of public employees who, in the exercise of their functions, have participated in the selection process, in the terms indicated, in principle would not be contrary to the right to the protection of personal data.



## VI

With regard to the rest of the data, paragraph 2 of article 24 of the LTC, mentioned above, will be applicable, therefore, for the purposes of granting access, it is necessary to make a reasoned weighting between the public interest in the disclosure of information and the rights of the affected persons.

In this regard, it is necessary to bear in mind that part of the information requested would have already been advertised by the City Council, in accordance with the regulations applicable to the selection process in question.

Thus, the TRLEBEP 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 publicity and transparency (article 55.2.a) ib)). Specifically, with regard to the provision of jobs for civil servants, the TRLEBEP provides that they must be provided through procedures based, among others, on the principle of publicity (article 78 EBEP).

Also Law 7/1985, of April 2, regulating the Basics of the Local Regime (LRBRL), provides in article 91.2 that "the selection of all personnel, whether official or labor, must be carried out in accordance with the public employment offer, through a public call and through the system of contest, opposition or free opposition contest in which, in any case, they are guaranteed constitutional principles of equality, merit and capacity, as well as that of publicity."

The Revised Text of the Municipal and Local Government Law of Catalonia, approved by Legislative Decree 2/2003, of April 28 (TRLMRLC), in articles 285 and 286, is pronounced in similar terms.

Decree 214/1990, of July 30, which approves the staff regulations for the service of local entities, regulates, under the principle of publicity, the selection procedure for staff, both civil and labor, of local entities (leaving to its own regulation the access to the status of national licensing official).

Regarding the application admission phase, article 78 of Decree 214/1990 establishes that the its resolution must be published in the DOGC (although it allows its replacement by any other notification system provided for in the administrative procedure law) and that has to indicate the place where the complete lists of admitted and excluded applicants are made public.

Article 79 of Decree 214/1990 provides that once the selective tests have begun the publication of the announcements of the completion of the remaining tests is carried out in the premises where they are completed the previous tests, that their publication in the BOP will no longer be mandatory, and that it will be in this place where they must be made public, for each test, in accordance with article 80, the list of those who passed in order of marks, while the final marks of the tests and the pass list shall be published on the notice board of the local body and, in accordance with section 82, the appointments shall to publish in the BOP.

In addition, personnel selection processes entail competitive competition and, therefore, there would be sufficient legal authorization to make public the identity of the people finally selected, as provided for in Law 39/2015, of October 1, on Administrative Procedure common of Public Administrations (LPAC), in relation to the notification of resolutions and administrative acts (article 40 et seq. LPAC), specifically, in article 45.1.b), according to which administrative acts must be published:

"When it comes to acts that are part of a selective or competition procedure competitive of any kind. In this case, the procedure must be called indicate the medium where successive publications will be made, lacking validity those that take place in different places."

From the perspective of transparency legislation, specifically, advertising obligations active, the LTC itself establishes, in its article 9.1.e), that the results of the selective processes for the provision and promotion of personnel must be published (on the transparency portal or the corresponding electronic headquarters), without distinguishing whether of provisional or definitive provision.

With regard to access to the status of staff of public administrations, article 21 of Decree 8/2021 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."

Based on the information available (the various Mayoral Decrees noted in FJ III of this report), the City Council would have made public the information relating to the lists of people admitted to the selection process, the score obtained in the various opposition phase exercises and in the competition phase for all participants, the final result of the process, as well as the appointment proposal and the appointment of the participant with the highest score obtained (note that, from the point of view of the principle of minimization of data (Article 5.1.c) RGPD) the publication of the lists of suspended applicants would not be justified).

It is, therefore, information that any person, including the person making the claim, has or may know and that in principle may be sufficient to comply with the general purpose of transparency and control of a selective process by the citizenship

In addition, it should be borne in mind that the approved participants of the selection process knew, from the time of the call, which personal information could be the subject of dissemination by applying the principle of publicity. In other words, the approved participants knew that both their participation in the process and the results obtained could be known as required by the principle of publicity.

Taking all this into account, facilitating access (and copying) to the information that has been disseminated during the selection process would not entail a special interference with regard to the right to the protection of personal data of the persons affected and , consequently, it could be provided to the staff representative.

However, beyond this, participants may also have a certain expectation of privacy regarding the rest of the personal information that affects your participation in the selection process, such as the application for participation, the supporting documentation of the alleged merits (curriculum vitae, academic training, professional experience, courses, etc.) and the content of the tests carried out and/or the personal interview. At the very least, they can have this expectation in the sense that this information - which goes beyond what the principle of publicity would require to be made public - must not be known by any person outside the selective process who requests it.

Given that in the present case the request is made by a staff representative, it is necessary to analyze whether access to this information would be necessary to achieve the purpose of access pursued, which should be framed within the exercise of functions legally attributed to staff delegates, or at least if it would be justified to access them to achieve the purposes of transparency provided for in the LTC.

Although the exercise of the right of access is not subject to motivation (article 18.2 LTC), knowing the motivation for which the person claiming wants to access the information or, in this specific case, a minimum explanation of the need or relevance of the data requested for the exercise of her functions as a trade union representative may be a relevant element to take into account for these purposes.

This is evident in the recent STS of February 9, 2021, by noting (FJ VI) that "it is relevant, therefore, that it mediates the proper relationship between the personal data of the statutory staff that are requested, with the important union function that develops So that only when these personal data are necessary for the exercise of trade union work, they could be considered exempt from consent, but not when they are disconnected or their relationship is unknown, as their connection with said trade union functions has not been made clear. (...) when the documentation and information is requested, no explanation is expressed, nor is any reference or mention made, on the usefulness of it for the fulfillment of its trade union duties. There is also no attempt to link your request for data with the tasks legally attributed to union representatives. (...)."

In this sense, it can be said that the personnel representative, as the representative of the workers, should be able to have the necessary information to monitor the evolution of the local body's employment policy (articles 40 TRLEBEP and 64 ET). Thus, it should be able to have information about the calls made, their content, the advertising mechanisms used, the number of people who participated or other information about the calls.

However, the fact of having to have information related to the selective processes carried out by the City Council does not necessarily imply that access must be given to the set of information of all the people who participated as applicants, so that they are identifiable.

Giving access to the aforementioned information would facilitate the development of profiles and this, in the workplace, is a measure that can be quite invasive of the privacy of the people affected, which can affect both the unfolding of their lives in the personal sphere, as in the social or professional sphere.

For this reason, it is convenient to distinguish access to this type of information of non-selected participants from access to this same information of the person finally selected.

Given that the request for information from the personnel representative must be understood as made in the context i for purposes of control over the actions carried out by the City Council in the selection process, which is necessarily governed by the principles of merit, capacity, equality, publicity and transparency, to which we have referred, it is not seen, in this sense , what impact can the fact of knowing information about candidates who have not been selected, so that they are identifiable, have on the control of the administrative action by the workers' representatives.

These people, despite opting for the position of TAG, have not been finally selected, so they have not been favored at any time with the decision adopted by the acting administration.

The reasons adduced by the complaining party in its request for access relating to the observation of irregularities, without further specification in this respect ("having seen the BOP it has been observed that irregularities occurred"), cannot be considered -are sufficient for the purposes of justifying the prevalence of the right of access claimed by the personnel delegate over the right to data protection of the affected persons (candidates not selected).

On the other hand, the possibility of providing anonymized data must be ruled out. In a case like this, the removal of the personal identifying data of the affected persons from said information or documentation would not be an effective tool to guarantee its anonymization, given that the information could easily be linked to a specific identifiable person ( the information about the identity and the score obtained by the people not selected in relation to the alleged merits and the tests they have been able to take has been published by means of Mayor's Decree 639/2011).

Therefore, from the perspective of data protection regulations, it would not be justified to obtain access and a copy of said documentation (application, accreditation of the alleged merits, content of the tests carried out or of the interview personnel or other documentation that may be included in the file in this regard) regarding the non-selected candidates.

With regard to the person finally selected, and given the reference to the observation of irregularities in the selection process by the personnel delegate in their request for access, it is necessary to consider whether the access to said information could be justified in view of what is established in article 31.6 of the TRLEBEP, even though we are faced with information related to a selective process carried out in 2011.

Article 31.6 of TRLEBEP provides that:

"6. The most representative trade union organizations in the field of Public Service are authorized to file administrative and judicial appeals against the decisions of the selection bodies."

This precept recognizes the legitimacy of the most representative trade union organizations to challenge the agreements of the selection bodies. And, consequently, this legitimization allows us to presuppose his qualification to analyze the file before making the challenge.

So, if the person requesting the information is part of a trade union organization that has the status of more representative, in order to carry out the control of the administrative action, it seems that access could cover not only the identity of the selected person, but also the knowledge of the alleged merits that have been taken into account (training, experience, etc.) and the score obtained, as well as the content of the tests and/or exams taken.

Certainly, this access would lead to a considerable impact on the right to data protection of the selected person, given that it allows to know not only the score obtained, but other relevant aspects of their academic or professional life, and even elements of their personality, depending on the tests carried out, which make it possible to obtain a profile. However, this limitation seems to necessarily derive from the recognition of the legitimacy mentioned by the TRLEBEP, given that it would not make sense to recognize the legitimacy to appeal administratively or through litigation, without being able to access the information necessary to analyze the viability of the appeal .

Although in the specific case we are dealing with information that refers to a selection process carried out in 2011, the legal recognition of this legitimacy to challenge the resolutions of the selection body towards the trade unions more representative and the lack of evidence in the specific case of the concurrence of certain personal circumstances of the selected candidate that could justify the limitation of the claimant's right of access to this information (article 31 LTC), could justify, despite the course of time,

the access of the personnel delegate - provided that she is part of a trade union organization that has the status of more representative - to said information, given its relevance to, if necessary, not only challenge the decision taken but even be able to bring to the attention of the City Council the existence of any detected cause of nullity of full rights so that it can act accordingly.

This, without prejudice to excluding certain identification and contact data of the selected person that may be included and that, from the perspective of the principle of minimization (article 5.1.c) RGPD), would be unnecessary (ID number, telephone, address, signature, etc.).

In the event that it is not a representative of the workers of a union organization that has the condition of being more representative, the information should be limited to the identity of the selected person and the scores obtained in the different merits or tests

## **conclusion**

The right to data protection does not prevent the personnel representative from accessing the merely identifying data of public employees who have participated in the selection process for a TAG position to which the claim refers, to the personal information of participants that must be object of publication in accordance with current regulations and, even, in the case of the trade union delegate of a trade union organization that is considered the most representative, to the documentation certifying the alleged merits and the content of the tests carried out on the person finally selected.

Barcelona, April 8, 2021