

IAI 22/2021

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 presented by a representative of the workers against an organization for the denial of access to data of the Territorial Management professionals who received the coordination supplement in the years 2019 and 2020.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted by a representative of the workers against an organization for the denial of the 'access to data from the professionals of the Territorial Management who received the EAP coordination supplement/ Teaching Unit / HEALTH PERSONNEL Assistant - GROUP A1 and GROUP A2, in the years 2019 and 2020.

After analyzing 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, the following report is issued:

Background

1. On February 24, 2021, a citizen who states that he is a representative of the workers, submits a letter to the organization, in which he requests the following information, "for the functions and legitimate interest as a representative of the workers/ is (...)":

"From each of the professionals of the Territorial Management (...) who received the EAP coordination supplement / Teaching Unit / HEALTH PERSONNEL Assistant - GROUP A1 and GROUP A2, in the years 2019 and 2020:

--> the 4th, 5th, 6th and 7th digits of the NIF
--> Production Unit Code (UP)
--> Primary Care Service Code (SAP)
--> Professional category -->
annual amount received --> supplement
code (C1 or C2)"

2. The file contains a copy of the organization's Resolution, addressed to the applicant, according to which: "(...) there are no reasons of public interest sufficient to provide access to the information on the amounts received individually of the "coordination supplement (...)", in the years 2019 and 2020, to the detriment of the protection of this remunerative personal data, as these professionals are not included in the cases in which the right to public information by carrying out the weighting between the right to the privacy of retributive personal data and the public interest in accessing this information (...), for which the Resolution dismisses the request access to the requested information.

3. On March 22, 2021, the applicant submits a complaint to the GAIP, in which he states that he has asked the organization for information on the professionals who were

receive the coordination supplement in the years 2019-2020, and indicates that access to the information has been denied.

4. On March 26, 2021, the GAIP informs the body of the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to public information , and the identification of the third parties affected, if any.

5. On March 30, 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

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 (Article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereafter, RGPD).

Therefore, any other limit or aspect that does not affect the personal data contained in the requested information is outside the scope of this report, as would be the case of the limit established in article 21.1.b) of the LTC, relating to the investigation or sanction of criminal, administrative or disciplinary infractions, the application of which could lead to the claimant's right of access being denied or restricted for the purposes of protecting the investigation .

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 complaint is lodged against the denial of access to individualized information about the professionals of the Territorial Management, who would have received during the years 2019-2020 the "EAP coordination supplement/Teaching Unit/Health STAFF Assistant - GROUP A1 and GROUP A2".

According to article 19 of Law 8/2007, of July 30, of the ICS:

"1. The staff of the Catalan Institute of Health can be integrated by:

a) Statutory personnel of the health services, which is governed by State Law 55/2003, of December 16, of the Framework Statute of the statutory personnel of the health services, and by the deployment regulations that approve the Generalitat (...). b) Official staff of the Administration of the Generalitat, who are governed by the public service regulations of the Administration of the Generalitat. Official health personnel are governed by State Law 55/2003, in the terms established by article 2.3 of said law. c) Labor personnel, who are governed by labor regulations and other conventionally applicable rules. d) Temporary staff, who, by virtue of appointment and on a non-permanent basis, only perform functions expressly qualified as trust or special advice.(...)"

The data of workers, whether statutory, labor, official or temporary, that identify them or that allow their identification, as well as those data that may refer more specifically to the workplace they occupy, but which are associated or link to a specific worker and therefore identify him, are personal data and are protected by the principles and guarantees of the data protection regulations. The data referring to a coordination supplement perceived by certain workers, with direct or indirect identification of these workers - as it could be, in the terms requested by the claimant, including certain figures from their NIF, which may make it difficult but not prevent their identification-

, implies a processing of personal data subject to the principles and guarantees of the RGPD.

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

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 aforementioned article 2.b) LTC 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 that supplied by the other subjects obliged in accordance with what establishes this law".

State 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).

The information relating to the coordination supplement that certain professionals would have received, the subject of the claim, is "public information" for the purposes of article 2.b) of the LTC, subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 et seq. LTC).

Accordingly, the right of access to public information may be denied or restricted for the reasons expressly provided for in the laws. Specifically, and with regard to information containing personal data, as would be the case, it will be necessary to assess whether or not the right to data protection of the affected persons would justify the limitation of the right of access to public information.

In relation to the GAIP request addressed to the body, in which a report is requested in relation to the claim presented and the identification of affected third parties if any, the available information does not include a copy of the said report of the body, nor the identification of affected persons.

III

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

The claimant links his request for information on the coordination supplement to his "functions and legitimate interest as a representative of the workers", although there is no information in the file about this status as a representative of the workers for part of the claimant. For this reason, it will be necessary to take into account, in the first place, the forecasts that may affect the case that the person making the claim is considered to be a representative of the workers.

According to the regulations, they are the staff boards or delegates (art. 39 Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the public employee, TRLEBEP), as well as the Company Committee (art. 63 of the Workers' Statute, Royal Legislative Decree 5/2015, of October 30, ET), the specific bodies representing civil servants, and public workers with employment contract, respectively, and as such they exercise the functions granted to them by the corresponding regulations (art. 40 TRLEBEP and art. 64 ET), among others, the function of monitoring compliance with the regulations, which grants them the right to obtain certain information.

The specific regulations provide that the representatives of the workers must be able to access information for the development of their functions of negotiation and defense of the rights of the workers, including certain information on retributive matters.

Thus, according to article 40.1 of the TRLEBEP, the staff boards and delegates have the following functions, among others: "a) Receive information, on the personnel policy, as well as on the

data relating to the evolution of remuneration, probable evolution of employment in the corresponding field and performance improvement programs.”

According to article 64.1 of the ET the works committee has the right to be informed and to be consulted, in the terms of this same article, on the various issues that may affect the workers, on the situation of the company, and on the evolution of employment in the company, or hiring forecasts, etc.

According to article 80.2 of the Framework Statute, the determination and application of statutory staff remuneration (section a) must be subject to negotiation at the negotiation meetings (art. 80.1), among other issues. the regulation of the working day, working time and the rest regime (section e)), and, in general, all those matters that affect the working conditions and the scope of relations of the statutory staff and their organizations unions with the public administration or the health service (section k)).

As can be seen from the provisions of the above regulations, the remuneration information that according to the applicable regulations should be provided to the workers' representatives, is not associated or individualized information for each worker, but would be general information.

The specific regulations would allow, for example, to provide the representative of the workers who requests the information, the aggregate amounts that the different professional groups concerned perceive as a coordination supplement, but it does not seem that the information can be communicated with the degree of details and links with affected persons that the claimant requests to know, based on the specific regulations cited.

However, it should be noted that the claimant requests information on the coordination supplement individually and associated with each of the workers who receive this supplement, since he asks to identify - albeit indirectly - the workers who receive the supplement in through NIF figures. Therefore, it does not seem that in the light of the specific regime applicable to the workers' representatives, it is possible to access the requested information.

Taking this into account, to analyze the possibility of communicating the individualized information about the coordination supplement, in the terms requested by the claimant, it will be necessary to refer to the provisions of the transparency legislation.

IV

The requested information is public information for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC). However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data. At the outset, it must be said that the data protection regulations would not prevent the provision of certain information that is requested if it is delivered in such a way that the affected persons are not identifiable. In this sense, it would be possible to access information on the professional category of the employee appointed to the position and the supplement assigned so that the distribution of the coordination supplement can be known, which remuneration levels are given in each case, and check whether the amounts are in line with what is expected.

complies with the regulations. It would also be possible to know what proportion of workers who receive the coordination supplement have received one or another remuneration level of those foreseen, and to be able to compare whether this conforms to the criteria determined by the II Agreement to set the amount to be received as a coordination supplement. Thus, it could be pertinent to know the unit or service where the worker in question is assigned (UP Productive Unit Code, or SAP Primary Care Service Code), in addition to knowing the annual amount received, as well as the Code of the supplement (C1 and C2) that has been received in each case, information that the claimant requests to know.

However, even if this information is provided without including names and surnames, the affected people can be easily identified. Equally in the event that instead of providing the name and surname, the four digits of the DNI proposed by the claimant are provided.

For this reason, we will have to adhere to what is derived from the limit consisting of the right to the protection of personal data collected in articles 23 and 24 of the LTC.

The data referring to the collection of a certain remuneration supplement, in principle, would not be particularly protected data (art. 9 RGPD and art. 23 LTC), so that the criteria of article 24.2 of the LTC will have to be taken into account, according to which:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. To carry out this weighting, the following circumstances must be taken into account, among others:

a) The elapsed time. b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people."

One of the objectives of the transparency legislation is that the Public Administrations must be accountable to the citizens, in relation, among other issues, to the management and destination that they give to public funds, such as those allocated to the remuneration received by workers in the public sector, of which the organization is a part. Thus, the transparency legislation provides citizens with the ability to control public funds, in short, to monitor the use of public money, as set out in the Preamble of the LTC.

The purpose of the Transparency Law is, as can be seen from article 1.2 LTC, to establish a system of relationship between people and the public administration and other obliged subjects, based on the knowledge of public activity, the incentive citizen participation, the improvement of the quality of public information and administrative management and the guarantee of accountability and responsibility in public management.

Thus, if citizens must be able to have this ability to control and demand accountability from the Public administrations, with more reason, if applicable, it will be necessary to recognize this capacity to a representative of the workers (the claimant links his request for information on the coordination complement, to his "functions and legitimate interest as a representative of the

workers”), in relation to information that may be relevant to the performance of their duties.

This would be a relevant issue to take into account for the purposes of weighting (art. 24.2 LTC), since the applicable regulations (TRLEBEP, ET and Framework Statute) recognize the exercise of representative functions in the corresponding workers' representative bodies . Therefore, if the claimant is part of the workers' representative bodies, it will be necessary to take into account whether the access to the requested information may be related to the fulfillment of these legitimate functions of representation, as the claimant himself points out.

Another relevant element will be the nature of the information to which you want to access.

Section 9.6.1 of the II Agreement of the Sectoral Health Negotiating Board on the working conditions of the statutory staff of the ICS (hereinafter, II Agreement), approved by Resolution TRI/4240/2006, of November 27, includes different remuneration supplements referred to the "Functions of responsibility, coordination and management in the field of primary care", among others, the following:

“EAP coordination supplement

It will be paid to the health personnel of the primary care team who are assigned the functions of team director or assistant director, in the terms provided for by Decree 53/2006, of March 28 , of measures to reform the Catalan Health Institute.

Two remuneration levels are established, depending on the volume and complexity of the coordination tasks specific to each team, taking into account the number of professionals who provide services, the population attached and the number of municipalities that make up the basic health area corresponding, if applicable.

The annual amount of this supplement will be paid in fourteen payments.

(...).”

We add that in the document "Remuneration book 2020. Statutory personnel of the ICS" (...), reference is made to the "EAP coordination supplement/Teaching unit/Assistant", as a supplement corresponding to the Group's health personnel A1 (specialist medical staff of the primary care team and specialist APD specialist), and to the "Additional EAP coordination/Teaching unit", as a supplement corresponding to the healthcare staff of Group A2 (healthcare nursing staff, social worker attached to primary care teams and APD practitioner).

From the information available, it seems that the claimant would be referring to workers who perceive these "coordination supplements", to have assigned functions of responsibility, coordination and direction in the field of primary care (ap. 9.6 .1 II Agreement).

At this point, it is appropriate to refer to the provisions of the LTC in relation to the obligations of active advertising, specifically, article 11.1 of the LTC, which establishes that they must be made public:

"b) The remuneration, compensations and allowances, the activities and the assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of the public bodies,

societies, foundations and consortia, and the indemnities they must receive when ceasing to hold office. (...). e) The general information on the remuneration, compensation and per diems received by public employees, grouped according to the levels and bodies."

In relation to this, article 20 of Law 8/2007, of the ICS, specifies what the management positions of the ICS would be:

"1. It is a management position of the Catalan Health Institute who carries out management or professional management tasks with autonomy and full responsibility only limited by the criteria and direct instructions issued by the higher governing bodies of the Institute. The Institute's management staff are employed under a senior management employment contract.

(...)."

If it were management personnel, the aforementioned forecasts would justify not only the delivery of the requested information, but also its publication.

However, based on the information available, it does not seem that the workers who receive the EAP coordination supplement can be classified as "managerial positions" in the terms of the cited article 20.

As argued in the Resolution dismissing the claimant's request, the professionals who receive the compensation supplement subject to the claim, "do not occupy positions of managerial staff of the ICS, nor are they temporary staff of trust, but rather occupy positions of clinical management (paragraph 7 of the seventh additional provision of Law 8/2007, of the ICS)."

According to the seventh Additional Provision, section 7, of Law 8/2007, of July 30, of the ICS:

"These are considered clinical management functions described in article 10 of State Law 44/2003, of November 21, on the organization of health professions, and in particular the functions assigned to the directions and medical sub-directorates, nursing directorates and sub-directorates, clinical directorates, heads of service and section of hierarchical hospital care and primary care services, nursing assistants and supervisors, and directors and to the adjuncts of the primary care and continuing care and emergencies team on a territorial basis (ACUT)."

Therefore, in principle, it seems clear that the professionals about whom information is requested would not be affected by the provision of article 11.1.b) LTC, since they would not be "managerial"

However, it is necessary to take into account the provisions of the new Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC) which, among others, specifies the concept of "retributions", for the purposes of article 11.1.e) LTC (art. 25.1)

For the relevant purposes, according to article 25.2 of the RLTC: "2. The Administration of the Generalitat and its public sector entities must make public, on an aggregated, total and annual basis, with

identification of the first and last name, and with a monthly frequency, the remuneration, compensation and per diems actually received by the staff in the service of the public administrations referred to in article 20.2.a) of this decree."

Section 2.a) of article 20 of the RLTC, referring to the publication of personnel templates (ex. art. 9.1.d) LTC), provides the following:

"2. The Administration of the Generalitat and its public sector entities, additionally, must publish, on a six-monthly basis and from the corresponding personnel information system, the information relating to:

a) The identification with names and surnames of the civil servants who occupy positions of command or singular positions of free designation, of casual staff and of labor personnel with management or command functions, whether they occupy jobs included in the list of positions of work as if they provide services without occupying jobs included in the list of jobs.

The identifying data can be anonymized or pseudonymized in the event that any of the legally provided limits are applicable, after weighting."

Therefore, Article 20.2.a) of the RLTC (which the claimant specifically refers to in his request), which must be taken into account for the purposes of Article 25.2 of the same RLTC, does not it would only affect the publication of remuneration of high-ranking officials of the Public Administration and the managerial staff of public bodies (art. 11.1.b) LTC), but it would extend the obligations of active advertising of article 11.1 LTC, between others, to remuneration of workers who may occupy positions of command or who perform "management or command functions".

Regarding the possible inclusion of workers who would receive the coordination supplement EAP in the provision of article 20.2.a) RLTC and, therefore, in article 25.2 RLTC, it is necessary to take into account article 21 of Law 8/2007, referring to "personnel with command functions" of the ICS, according to which:

"1. It is personnel with command functions who occupy jobs that have attributed command functions in the structures of the corporate services and in the management units and territorial managements of the Catalan Institute of Health, but which are not considered positions managers in accordance with article 20. These jobs are provided by public call.

(...).

4. The persons who occupy the sub-directorates of corporate or similar services, the medical assistance, nursing, personnel, economic management and general or similar services departments of the territorial managements, centers are considered personnel with command functions hospitals and the areas of primary care and other management units of the structure of the Catalan Institute of Health, and also the clinical departments and the workplaces that are assigned the functions of any of those mentioned in this article independently of the denomination they have.

(...).”

In addition, section 3 of Decree 53/2006, of March 28, on measures to reform the Catalan Institute of Health, refers specifically to "care management bodies", and specifies the following in article 17 :

"17.1 The direction of the Primary Care Teams will be carried out by a director of the Primary Care Team and an assistant to the Management.

The positions of director/director and assistant/deputy to the Directorate will be provided by the system of free appointment with a public call in the Official Journal of the Generalitat of Catalonia and will fall indiscriminately to optional staff or ATS/diploma in team nursing of primary care that provide services to the Catalan Institute of Health. In their designation, the characteristics and requirements of the corresponding Primary Care Team will be taken into account, as well as their professional curriculum and the accreditation of managerial skills with respect to the functions of these positions."

Thus, taking into account that the regulations themselves would attribute to the directors and assistants of EAP, the consideration of command bodies, the provisions of article 25.2 would apply to them, in connection with article 20.2.a) of the RLTC, which would involve extending the active advertising obligations provided for in the RLTC to the remuneration of these directors and deputy

In any case, we note that the same article 20.2.a), second paragraph, of the RLTC, foresees the possibility that: "Identifying data can be anonymized or pseudonymized in the event that any of the legally provided limits are applicable, after weighting .”

That is to say, although the RLTC seems to have expanded the obligations of active advertising in relation to information about workers who exercise "management or command functions" (as could be the case at hand) the regulatory norm itself (art. 20.2.a) RLTC) refers to the weighting necessary to determine, among others, the application of the limits provided for the communication of data, a matter to which we refer below.

However, in the case at hand, there are other elements that must tip the balance in favor of access.

At the outset, remember that this Authority has already supported the criterion (IAI 3/2019, IAI 33/2019, IAI 44/2019, or IAI 1/2021), that the transparency obligations of article 11.1.b) LTC can be extended with respect to requests for access to information that affect personnel who occupy positions of special trust or special responsibility within an organization, positions of free appointment, or that involve a high level of remuneration. This criterion should also be taken into account in relation to sites that involve a certain margin of discretion in terms of their provision.

In the case at hand, there are different elements that would enable the said criterion to be applied. Specifically, according to the regulations, the positions of director/assistant/aa in the EAP Directorate are provided by the system of free appointment (art. 17 Decree 53/2007), which entails a greater margin of discretion with respect to other appointment systems.

It also seems undeniable that the appointment to this position implies the attribution to certain workers of a greater degree of responsibility within the organization, with respect to other workers in the same Group or category, and that the appointment also entails a higher level of remuneration which, in addition, can vary within the same Group. In this sense, the supplement in question consists of two different remuneration levels based on different factors, such as the volume and complexity of the coordination tasks specific to each team, the number of professionals who provide services, the population attached or the number of municipalities that make up the corresponding basic health area (section 9.6.1 II Agreement, and "Book of remuneration 2020"). Therefore, it also seems that there would be a certain degree of discretion.

Secondly, it is also necessary to attend to the nature of the coordination supplement about which information is requested. According to the available information (section 9.6.1 II Agreement), it is not associated with a certain position but with certain workers who go on to carry out certain functions. In addition, the supplement may have a different amount depending on the group to which the worker belongs and depending on different factors (art. 17.1 Decree 53/2007). Therefore, it is clear that the specific amount received by certain workers for this concept is not known through the information contained in the employment relationship (RLT), but that there is a margin of discretion in its awarding, which can justify to a greater extent the need for control.

Faced with the arguments that have been presented, it is true that the dissemination of information relating to a worker's income can facilitate the obtaining of an economic profile of him, which can end up causing an affectation in different orders (professional, personal, financial, etc.). But it must also be taken into account that in this case it would not be about accessing the worker's income but only a certain supplement, which, due to its amount, does not seem to be able to end up offering an economic profile of the worker.

The elements that have been mentioned mean that the right to data protection of the affected persons must yield to the public interest in the knowledge of the information, and that therefore the identity (name and surname) of the workers who perceive the retributive supplement, can be known.

Thus, in the weighting of the rights that must be done with respect to the request for access to information, that is, in what we could call the "public interest test" that must determine whether access to the information contributes to a better knowledge of the criteria of organization and operation of the Public Administration and of how public resources are allocated, it can be considered that access to the requested information may be relevant for the control of

If citizens must be able to have this ability to control and hold public administrations to account, with more reason, if applicable, it will be necessary to recognize this ability to a representative of the workers as would be the case of the claimant, in relation to the information that may be relevant for the development of its functions.

For the reasons stated, taking into account the characteristics associated with the retributive supplement on which information is requested, the data protection regulations would not prevent communicating the individualized information requested to the representative of the workers, with an indication of identity (name and surname of those affected), on the coordination supplement corresponding to the years 2019-2020.

v

Finally, we note that the claimant does not request to know the first and last names of those affected, but only certain numbers of the NIF ("numbers 4th, 5th, 6th and 7th of the NIF), which in principle do not allow the identification of the affected workers of direct way

It should be noted that the fact of providing information with only these four numbers of the DNI (and without the names and surnames) does not constitute a good technique if what is intended is to guarantee the anonymity of the people affected, given that through these figures it can be relatively easy to end up identifying the people affected, especially if the person receiving the information is part of the workers' representative bodies. Therefore, it does not make sense to provide information with these four figures.

In any case, although, as has been pointed out, the transparency regulations could justify access to the requested information by identifying the people with first and last names, taking into account that of the terms of the claimant's request it seems clear that the claimant is not interested in knowing the identity of the affected persons, but only in identifying them, it could be considered, as a more guaranteeing solution with the right to data protection, the possibility of handing over the information by attributing a code not decipherable by third parties, instead of the four digits of the DNI requested by the claimant.

conclusion

Data protection regulations would not prevent the workers' representative from communicating the individualized information they request, with an indication of the identity (name and surname of those affected), in relation to the coordination supplement corresponding to the years 2019-2020. This, without prejudice to the fact that, given the terms of the request, if applicable, a random code attributed to each worker can be provided (instead of certain numbers from the

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