

IAI 23/2021

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 a public company for the denial of access to information on aid to the training of its staff.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on a claim submitted by a representative of the workers against the refusal by the public company of the request for access to information on aid for the training of its staff.

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

Background

1 On February 22, 2021, a request for access to public information was submitted to the public company requesting:

"- For each of the grants for courses/congresses that were requested from the GTCC in the years 2019 and 2020: --> Details of the person requesting ----> Name and surnames ----> Category professional ----> Date of application ----> Amount requested -----> Enrollment -----> Other (allowances,...)

--> Report of the Head of the Unit ----> Name and surnames ----> Favorable/Unfavorable -----> No. hours in working hours ----> Date --> Report of the Training Committee

----> Granted / Denied ---->
Priority (1,2,3)
----> Amount approved
-----> Tuition ----->
Other (diet,...)
-----> Total

----> Date”

3. On March 19, 2021, the public company issues a Resolution rejecting the request for access to the requested information, specifically, it considers that "(...) there are no reasons of interest sufficient public to give access to information about the aid to the training of the staff who asked for them and/or perceived to the detriment of the protection of their personal data, as long as these professionals are not included in the cases in which it prevails 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 according to the level of the public employee's position, which is why the rejection of the right of access to the requested information (...).”

2. On March 22, 2021, the applicant submits a claim to the GAIP against the public company for the rejection of the request for access to public information requested by reiterating his initial request.

3. On March 26, 2021, the GAIP will send the claim to the public company, requesting a report that sets out the factual background and grounds its position in relation to the claim, as well as the complete file and, if applicable, specify the third parties affected by the claimed access.

4. At the date of issue of this report, this Authority has no record of the public company's response to the request made by the GAIP.

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 opinion is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected. Therefore, any other limit or aspect that does not affect the personal data 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

Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), provides that all processing of personal data must be lawful (article 5.1.a) and, in this sense, establishes a system of legitimizing the processing of data which is based on the need for one of the legal bases established in article 6.1 to apply. Specifically, section c) provides that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c).

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

Article 18.1 of the LTC establishes: "People have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legally constituted legal person".

The aforementioned 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 one supplied by the other obliged subjects in accordance with the provisions of this law".

In this sense, information related to training aid is information that must be considered public for the purposes of article 2.b) of the LTC and, therefore, remains subject to the right of access (art. 18 of the LTC).

In any case, the right to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the limitations and criteria provided for in the transparency legislation (articles 23 and 24 of the LTC), and the principles of the data protection regulations personal

III

At the outset it should be pointed out that for the information available, the person making the request for information is a representative of the workers. Although not credited to the record, this appears to be the case with his claim. In his claim, the representative alleges that he is requesting this information "for his functions and legitimate interest as a representative of the workers in this territorial area." Therefore, this report will be based on the premise that this person holds the status of representative of the workers.

This is a relevant question, given that they are the boards or staff delegates (art. 39 TRLEBEP (Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Basic Statute Law of the public employee)), as well as the Company Committee (art. 63 of the Workers' Statute (Royal Legislative Decree 5/2015, of October 30), 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 (art. 40 TRLEBEP and 64 ET), among others, the function of monitoring compliance with current regulations.

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The first additional Provision of Law 19/2014 provides that 2. Access to public information in matters that have established a special access regime is regulated by their specific regulations and, as a supplement, by this law."

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.

Article 40.1 of the TRLEBEP, relating to the functions and legitimacy of the representative bodies, grants the personnel delegates the functions of "receiving information on the personnel policy, as well as on data relating to the evolution of remuneration, evolution likely employment in the relevant field and performance improvement programs, as well as that of compliance with current regulations regarding working conditions, prevention of occupational risks, Social Security and employment, and exercising, if necessary, the appropriate legal actions before the competent bodies". These, as workers' representative bodies, must be able to access the information available to the public company that is necessary for the exercise of their duties, information that could contain workers' personal data. However, according to the information in the file, the information requested is not related to the aspects provided for in article 40.

With regard to labor personnel, article 64 of the ET attributes to the Works Council and by extension also to the staff delegates (art. 62.2 ET) the right to be informed on certain issues, without there being a mention specific to the information requested in the case at hand. Article 64.5.e) refers to the receipt of information on the company's professional training plans. 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." These forecasts can give the right to receive information about the planned training actions, and about the result of them

(aggregated data on participation etc.), but the right of trade union representatives to receive this information does not cover receiving all the individualized information requested.

Beyond these provisions, the TRLEBEP does not expressly provide that the workers' representatives must receive a detailed list of all the workers who have requested aid to carry out any training activity promoted by the public company.

However, it will be necessary to determine whether the transparency regulations would enable access to this data.

IV

The claimant requests from the public company access to "each of the course/congress grants that were requested from the GTCC in the years 2019 and 2020" and specifies the request in the "Data of the person applicant", in particular, the name and surname, the professional category, the date of the application, the amount requested (tuition, allowances...) "the Report of the head of the unit", in particular, the name and surname, if it is favorable or unfavorable, the number of hours in working hours and the date, and "the Report of the training commission", specifically if it is granted or denied, the priority (1,2,3), the total approved amount (tuition, allowances...) and the date.

At the outset, due to the type of information being treated, it does not refer to particularly protected data, that is, relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, on which access should be limited, in accordance with the provisions of article 23 LTC.

Starting, then, from the premise that it is not information of special protection and in application of article 24 LTC it is necessary to make a reasoned weighting between the different rights and interests at stake.

Thus, article 24 of the LTC establishes:

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

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the people affected. To carry out this weighting, the following circumstances must be taken into account, among others: a) The elapsed time. b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people.

3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the data protection legislation staff."

At the outset, among the information requested will be the identification data of the persons responsible for the administrative units involved in the procedure for awarding grants and courses.

Regarding this data, it is necessary to take into account paragraph 1 of article 24 of the transcribed LTC, and also article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to the public information (hereafter Decree 8/2021) which specifies that it is understood as merely identifying personal data "consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone number 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". And he adds that "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 must be removed, in particular or equivalent document 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 pos

According to this precept, there would be no disadvantage, from the point of view of data protection, in providing certain merely identifying information (name and surname and position or position held) of public employees who intervene because of their functions in the different procedures or public actions carried out by the Administration, unless there are specific circumstances that justify the prevalence of the right to data protection of the person or persons affected. In this specific case, it would be the name and surname of the person in charge of the unit that informs about the granting of training aid.

Regarding the rest of the data, it should be noted that the claimant requests information on each of the course/congress grants that were requested from the GTCC in 2019 and 2020, without specifying whether it refers to courses organized by the company public or by third parties. Therefore, it must be considered that these can be both courses organized by the public company, as well as courses organized by third parties and in which the public company has granted some type of financial aid to attend.

Based on this premise and with regard to the courses taught by the public company, at the outset, it should be taken into account that in terms of transparency in the organization and administrative structure, article 9.1. g) of the LTC, obliges the administrations to publish "the lists that are eventually created to access the training and promotion processes." According to this precept, the list of people registered to participate in a training process should be information available on the transparency portal.

In this sense, article 22 of Decree 8/2021 specifies that "lists that may be created to access the training and promotion processes are understood to include personnel in the service of public administrations admitted to training activities of optional reception

and directly related to internal, economic or professional promotion, organized by each of the public administrations" and makes it clear that these lists must publish "the data relating to the identification of the names and surnames of the persons admitted, the job they occupy and the organic unit in which it is integrated, the unit that manages the activity and a description of the training activity, which must include its code, the year and the start and end dates".

It seems clear that in the case of courses organized by the public company itself, there can be no inconvenience, from the point of view of the right to data protection, in delivering this information, including also the information related to the favorable or unfavorable sense of the reports that have been issued for their award, or the working hours they occupy.

Article 14 of TRLEBEP recognizes the right of civil servants to continuous training and the permanent updating of their professional knowledge and skills, preferably during working hours, and Article 16 of this same text recognizes civil servants the right to professional career, understood as "the ordered set of promotion opportunities and expectations of professional progress in accordance with the principles of equal merit and ability." With this objective, public administrations must promote the updating and improvement of the professional qualification of their officials. With this objective, it may be justified that the union representatives can access this information, whenever it may be relevant to the control of compliance with this right of officials and that the intrusion into the private life of the affected persons is not significant having taking into account the obligations of active advertising that fall on the administration.

With regard to the courses organized by third parties, to which the public company has authorized some of its employees to attend and in respect of which it has granted some financial aid, it must be taken into account that in terms of transparency in the subsidized activity, the Article 15 c) of the LTC obliges the administrations to publish the information relating to "subsidies and public aid granted, with an indication of the amount, the object and the benefi

In this sense, article 45.2 of Decree 8/2021 specifies that compliance with the duty to publish information relating to grants and aid granted, established in article 15 c) of the LTC "is effective, for the subjects who are obliged to do so, by sending this information to the Registry of Subsidies and Aids of Catalonia, which must be accessible from the Transparency Portal of Catalonia." And it specifies that "the Transparency Portal of Catalonia must provide access, through a link to the Register of Subsidies and Aids of Catalonia, to the regulations governing the subsidy or aid, to its regulatory bases, to the resolution approving the call, to its possible modifications, and to the information on the amount, the object and the beneficiaries of the subsidies and public aid granted with advertising and competitive competition or without."

In fact, and with regard to high-ranking officials and managerial personnel, article 29 of Decree 8/2021 states that "the designations for the access of high-ranking officials of the Administration of the Generalitat must be published and of the management staff of its public sector entities to any training activity that involves an expense for the Administration of the Generalitat or its public sector entities." And it specifies that "the data relating to the identification of the names and surnames of the admitted persons, the position they hold, the unit, body or institution that manages the activity and a description of the training activity must be published, which it must include the code, the year and the start and end dates."

It would also seem justified in this case to provide the information on the identity of the beneficiary of the aid (person who attends the course), the amount of the aid and the object (name and characteristics of the course). Similarly, for the purpose already mentioned, it would seem justified to be able to access the information related to the favorable or unfavorable direction of the reports that have been issued for their award, or the working hours occupied

Special mention should be made of the requested economic information, specifically, that relating to "diets or others".

Article 25 of Decree 8/2021 specifies that per diems are the "amounts that are credited daily as financial compensation to meet the costs of maintenance and accommodation that may originate from work assignments and attendance at courses abroad of the locality of the usual place of work." And it defines that indemnities are understood as "other amounts that may be received due to the provision of services to the public administration. It includes, among others, compensation for travel expenses, (...), for collaboration in courses and activities for training and improvement of personnel organized by the public administration (...). "

It should be borne in mind that in the case of high-ranking officials and managerial personnel, article 11.1.b) of the LTC provides that the remuneration, compensation and allowances of high-ranking officials and managerial personnel must be made public.

This provision has been expanded by article 25 of Decree 8/2021 which, in the case of the Administration of the Generalitat and its public sector entities, establishes that "they must make public, on an aggregate basis, total and annually, with identification of the first and last name, and with a monthly frequency, the remunerations, compensations and allowances actually received by the personnel in the service of the public administrations referred to in article 20.2.a) of this decree.". Article 20.2.a) of Decree 8/2021, to which article 25 refers, refers to command positions or singular positions of free designation, of casual staff and of labor staff with management or command functions.

Beyond this, in matters of transparency in economic, accounting, budgetary and patrimonial management, article 11.1.e) of Law 19/2014, obliges administrations to publish "general information on remuneration, compensation and per diems received by public employees, grouped according to levels and bodies.", but not the individualized information for each of the public employees.

Thus, in accordance with the precepts set out, the public company would be obliged to make public on the transparency portal the list of admitted people who have obtained training aid and with regard to the allowance data, the referring to senior positions, managerial staff, civil servants who occupy command positions or individual positions of free appointment, casual staff and 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.

In this sense, it is the law itself, which prevails over the public interest in access to the identity of the people who participate in the aforementioned training processes against their right to

privacy Therefore, the expectations of privacy that these workers may have regarding the allowances received for their participation in the training programs are conditioned by the publicity of their identity in the interest of transparency.

However, beyond that, and with regard to the rest of the employees, it seems that a similar conclusion must be reached, given that in the case at hand, the perception of allowances or allowances are not part of the ordinary remunerations associated with the workplace or the performance or other characteristics of the workers but have an exceptional character and their perception will often be associated with a wide margin of discretion, not only for the authorization or not of assistance to the 'training activity, but also with regard to the perception of allowances and compensations.

The request for information is based on the exercise of the functions as a representative of the workers of the Territorial Management of Central Catalonia of the public company and although, as reported in the Legal Basis III of this report, neither the TRLEBEP nor the ET expressly foresee that the representatives of the workers must receive this information, it must be taken into account that the representatives of the workers perform a monitoring and control function, among other issues , of public funds that are allocated to scheduled or unscheduled training and, in short, contribute to ensuring the effectiveness of the right of workers to receive sufficient and adequate information about training aid that in this case, the public company offers them, and about the people who benefit from them.

conclusion

The regulations for the protection of personal data do not prevent the access of the representatives of the workers to the information requested about the grants for courses or congresses that were requested from the GTCC for the training of the workers of the Territorial Administration of Central Catalonia of the public company carried out during the years 2019 and 2020.

Barcelona, April 20, 2021