

IAI 34/2021

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim against a City Council's partial assessment of the request for access to information relating to two employees of a public business entity

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 in relation to the partial estimate of a City Council of the request for access to information relating to two female employees of a public business entity.

Having analyzed the request, which is accompanied by a copy of the file of the claim presented, in accordance with the report of the Legal Counsel, the following is reported.

Background

1. On February 16, 2021, a request addressed to a City Council is submitted, in which the following information is requested regarding two employees of a public business entity:

"1) Code of the workplace, by which you can refer to the RLT published on the City Council's transparency website [...], and access the file that contains the data relating to: classification (position class, type of attachment, access group, destination level and provisioning system), categories of access to the position, remuneration scheme, other possible requirements of the position, hours (full time), competence level and functions.

2) Data relating to access to your workplace in [...], including: a) Announcement of the call. b) Bases. c) Name and surname and four numbers of the identity document of the persons admitted to each test or exercise of the process and of the person finally selected, together with the scores obtained. d) Date of appointment."

2. On March 11, 2021, the City Council informs the affected workers of the content of the access request made, without identifying the applicant, while giving them a period of ten working days to present the allegations they consider appropriate. On the same date, the applicant is informed of this procedure and of the suspension of the deadline to respond to their request until the presentation of allegations or until the expiration of the deadline granted to them effect

3. On March 16, 2021, both workers made allegations referring to the right to the protection of their personal data recognized in Regulation (EU) 2016/679 of the Parliament and of the Council, 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, as well as Law 19/2014, of December 29, on transparency, access to public information and good government, opposing the delivery of the requested information.

They base their opposition on the grounds that they know the identity of the applicant and that he would have submitted the access request as a result of being dissatisfied with an administrative procedure in the processing of which they would have intervened in the exercise of their functions.

4. On March 29, 2021, the City Council will notify the person requesting the partial estimate of the access request in the following terms (names and surnames have been anonymized in this report):

"1.- Inform about the incorporation procedures of Ms. To and Mrs. B at the City Council [...], although the effectiveness of the right of access in respect of this point will become effective once the deadline for filing a contentious administrative appeal has passed without it having been formalized or, in the event that this appeal was presented, if it was not accompanied by a request for precautionary measures of suspension or if this incident was resolved in the sense of maintaining the enforceability of the administrative act, as provided for in article 34.3 of Law 19 /2014, of December 29, on transparency, access to public information and good governance.

2.- Dismiss the request with regard to other personal information, in accordance with article 24.1 of Law 19/2014, of December 29, on transparency, access to public information and good governance, taking into account the Concurrence of the personal data protection limit. [...]"

On that same date, the applicant sends an email to the City Council in which he states that the information he has requested "[...] falls under the aspects that the Transparency Law, access to public information and good governance of Catalonia determines how subject to active advertising, and for this reason, I thought that the answer would be only to indicate the link of the publication on the web. I don't understand that there can be any opposition from third parties".

On the other hand, it states that if the incorporation procedure of Ms. As a result of the deletion of a supra-municipal entity, identified in the mail, the specific agreements and supporting documentation justifying its affiliation to the public business entity are requested.

5. On April 12, 2021, the applicant submits a claim to the GAIP in which he states that although the City Council has responded to his request, it has not provided the information. The claimant reiterates the terms of his request and the considerations conveyed via email to the City Council on March 29, 2021.

6. On April 14, 2021, the GAIP will send the claim to the City Council, 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, where appropriate, specifying the third parties affected by the requested access.

7. On April 26, 2021, the City Council sends a legal report to the GAIP in which, in addition to stating the legal grounds against the opposition of the person claiming to transfer their request of access to the affected persons, makes the following allegations:

- The information requested by the claimant exceeds the scope of active advertising obligations. In this sense, it states that "the publication of the list of jobs provided for in art. 9.1.d) does not include the identification of the employees who occupy each of the jobs and, with regard to the selective processes - that of access to job boards as far as this report is concerned - the publicity provided for in art. . 9.1.e) refers to the calls and the results. [...] For all that has been said, we cannot accept the allegation that the information requested constitutes active advertising, in the terms of Chapter II of Title II of the Transparency Law" .
- It also refers to what in the resolution of February 16, 2021 it decided to partially approve the access request, but "[...] this information as the referenced documentation - the Decree and the bases - on the date of the signature of this report has not yet been facilitated [...] in application of article 34.3 of Law 19/2014, of 29 December".
- He also understands that it is not appropriate to provide information relating to the identity and scores of the people participating in the selection process, understanding that the personal data protection limit provided for in Article 24.1 of Law 19/2014 applies , of December 29 on transparency, access to public information and good governance, "[...] as defined by the Catalan Data Protection Authority, [...] it is not appropriate to communicate certain information personnel who are not known to have participated in the selection process, nor does it specify any other reason that may be relevant to the effects of the weighting and, likewise, in attention to the expectation of privacy that the participants may have with regard to which they are determined personal information is not known by any person outside the selective process who requests it".

8. On April 29, 2021, the GAIP requests a report from this Authority, in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to the public information and good governance.

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, 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 (art. 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 Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

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 data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, apply to the treatments that are carried out on any information "on an identified or identifiable natural person ("the interested party »); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person".

Article 4.2) 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,

dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction”.

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment "is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

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

The regulation and guarantee of public access to official documents held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), which recognizes people's right of access to public information, understood as such "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 obliged subjects in accordance with the provisions of this law" (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

In the case at hand, in which the claimant requests access to certain information relating to the institutional organization and administrative structure, and economic and budgetary management of the public business entity, among others, it can be concluded which must be considered public information for the purposes of article 2.b) of the LTC, and subject to the right of access (article 18 of the LTC), as it is information in their possession as a result of their activity . 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.

III

The person making the claim requests access to public information relating to the institutional organization and administrative structure, the financial and budgetary management of the entity, among other information, which directly affects two workers.

In particular, the claimant requests access to the job code and classification (position class, attachment type, access group, assignment level and provision system), category, position requirements, skill level and functions of each of the workers, together with the remuneration system and the schedule in full dedication.

At the same time, he also requests to know information related to access to his workplaces regarding the announcement of the call, the bases, the names and surnames and four numbers of the identity document of the persons admitted in each test or exercise of the selection process and of the person finally selected, together with the scores obtained, and the date of appointment. In addition, nuance in the case of Mrs. A -according to the content of the mail addressed to the City Council on March 29, 2021- that if the incorporation procedure has been as a result of the deletion of a supra-municipal entity, identified in the application, it is only - solicit the specific agreements and supporting documentation that justify their affiliation to the public business entity.

It is worth saying that the City Council partially considered the request made by the person making the claim and, as it has stated, agreed to report on the procedures for the incorporation of both workers in the terms that have been set out in the antecedents of this report . However, at the time this report is issued, and in the absence of more information, it would appear that the information has not yet been communicated under the provisions of Article 34.3 of the LTC ("If the resolution is estimate of the request and there has been opposition from third parties, access to the information can only be made effective once the deadline for filing an administrative appeal has passed without it having been formalized or, in the event that has presented this appeal, if it has not been accompanied by a request for precautionary measures of suspension or this incident has been resolved by maintaining the enforceability of the administrative act."). It is understood that for this reason the claimant reiterates

Taking into account the circumstances in the case at hand, it is considered necessary that the analysis of the claim made by the claimant include all the requested ends, including the information to which the City Council has agreed give access

Having delimited the information on which the analysis of the access request will be concerned in this report, it should be noted that this Authority has previously had the opportunity to analyze access to the list of jobs, the workforce and the remuneration of public employees, among others, in the reports IAI 4/2018, IAI 29/2018, or in the opinion CNS 20/2018, as well as the information relating to the access regime of public employees, such as in the IAI report 16/2021 or the CNS opinion 44/2019, available on the website <https://apdcat.gob.es>

From the point of view of the limits to data protection provided for in the transparency regulations, it does not seem that in the case at hand personal data referred to in article 23 of the LTC may be affected ("[. ..] relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a warning public to the offender [...]"). If this is the case, the access request should be denied, unless the person concerned expressly consents to it in writing that must accompany the request.

According to article 70.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information: "For the purposes of what is provided for in article 23 of Law 19/2014, of

December, it is up to the applicant to provide the express and written consent of the holders of the personal data affected by the requested access. The public administrations can transfer the request and the consent to the person holding the data in order to certify the written consent provided, in case of doubt about its veracity.

In the particular case, both workers have expressed their express opposition, through letters dated March 15 and 16, 2021, to the fact that the City Council will notify the person claiming the requested information, therefore by not stating the consent, in case there was information of data categories of article 23 of the LTC, the confidentiality of this information must be preserved and it must be excluded from the claimant's access.

IV

With regard to public information not affected by the limit provided for in article 23 of the LTC, the analysis must be carried out based on the provisions of article 24 of the LTC, which provides th

"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.

[...]."

At the outset, it must be stated that, taking into consideration that the access request affects different types of public information, this analysis will be carried out individually for each of them.

First, regarding the request for access to information regarding the job code and classification (position class, type of linkage, access group, destination level and provision system), category, requirements of the position, level of competence and functions of each of the workers, as well as the schedule (full time) and the remuneration system, the analysis must be based on the provisions of article 74 of Royal Legislative Decree 5/2015, of 30 October, by which the revised text of the Law on the Basic Statute of the Public Employee (EBEP) is approved, by wh

to structure, and make public, their organization through workplace relations or other similar organizational instruments that include, at least, the name of the positions, professional classification groups, bodies or scales, if applicable, to which they are attached, the provision systems and the complementary remunerations.

At the same time, with respect to the local area, Decree 214/1990, of July 30, which approves the Regulation of personnel in the service of local entities, provides that local entities must draw up and make public the staff of the staff, which must be integrated by the detailed relationship by bodies, scales, subscales, classes and categories of the positions in which civil servants, labor personnel and the eventual grouped are integrated, indicating the denomination of these , the number of places that constitute them, the number of those that are vacant and the group to which they belong, in accordance with the qualification required for their entry (article 25), and with respect to the content of the list of positions of work, the functions, attributions and tasks to be performed by the personnel occupying the respective jobs must be assigned, specifying in the case of civil servants, the scale, subscale, class and category to which must belong to the person who occupies each job (art . 29).

Article 30.2 of the Decree provides that for each workplace, at least:

"a) The name of the place and its organic framework. b) The essential characteristics of the site, including, where applicable, the specific functions attributed. c) The requirements required to occupy the job. d) The assigned destination supplement and its organic level, as well as, if applicable, the corresponding specific supplement. e) The form of provision of the site."

Regarding the legal authorization for the publication of this information, article 8.1.d) of the LTC, refers to the advertising of the workforce, the list of jobs and the remuneration system. And in particular, it foresees that it must be made public "the list of jobs of official, labor and temporary staff, and the staff and the list of temporary contracts and internships not linked to any of the said jobs list of positions" (art. 9.1.d) and, for the purposes that interest us in this report, (given that, from the information available, it does not appear that the workers affected by the access request have the status of a high position or directives), "The general information on the remunerations, compensations and per diems received by public employees, grouped according to the levels and bodies" must also be made public (art. 11.1.e).

For its part, Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), also contains several provisions that affect this matter.

Thus, with regard to staff information, article 20.3 of the RLTC, in addition to providing for the need to make public the information referred to in article 9.1.d) of the LTC , foresees that in the case of local administrations and, with regard to the workforce, it must be made public "[...] the detailed list of bodies, scales, subscales, classes and categories of the positions in which official staff, labor staff and casual staff are integrated, and they must indicate their name, the number of places, the number of those that are vacant and the group to which they belong, in accordance with the qualification required for their admission and in accordance with the regulations in force in the field of civil service."

Regarding the remuneration regime, article 25.1.a) of the RLTC defines remuneration as "the financial compensation that can be received for the work carried out", and to this effect, provides that the information that must be made public corresponds to to "[...] the overall gross annual remuneration of the different bodies and levels, with details of the basic remuneration and the supplements that correspond according to the regulations, and the agreement or non-agreements that apply. In this sense, the remuneration tables of the personnel in the service of the public administrations must be published, with an indication of the basic and complementary remunerations, in the case of civil servants, and with an indication of the basic remunerations, complement of seniority, extraordinary payments and other supplements and specific bonuses according to the agreement or outside of the agreement, in the case of labor personnel."

On the basis of everything that has been presented, and taken to the case at hand, it follows that the information on which access is requested - regarding the job code, its classification (class of position, type of connection, access group, destination level and provision system), category, position requirements, competence level and assigned functions, as well as the schedule (full-time) and the remuneration system-, should be accessible to through the list of jobs that the administration must make public in accordance with the active advertising regime provided for in the transparency regulations. And this can include both the remuneration associated with the job (the RLT must include the level associated with the destination supplement and also the specific supplement, and the basic and three-year salary can be known from the Group to which the workplace) as well as the schedule (not the specific schedule, but the type of schedule), given that it is part of the essential characteristics of the position.

The information published in the RLT must not include personal data relating to the people who occupy the jobs. However, the claimant requests to be able to link this information that can be found through the RLT with two specific people.

From the point of view of the data protection regulations, the analysis on access to this information must go through a prior reasoned weighting between the public interest in the disclosure and the right of the persons affected (art. 24.2 of the LTC). In this weighting it is necessary to take into account all the circumstances that affect each specific case with the aim of determining whether the claimant's right of access or the data protection right of the affected persons should prevail, taking as based on the different elements listed in the aforementioned article.

It does not seem that a priori the right to data protection of the employees of the entity affected by the access request should prevail over the public interest in the disclosure of this information for different reasons.

Firstly because, in accordance with what has been analyzed previously, the information relating to the jobs requested by the person making the request is subject to the active advertising regime provided for in the transparency regulations, without prejudice to the fact that it must not include personal data in the terms that have been set forth. This is relevant for the purposes that, moving forward to the analysis that will be carried out in the following legal basis, it must be taken into account that the regulations that regulate the selection and provision of jobs by personnel in the service of the public administration, and the transparency regulations, provide for other obligations relating to the publicity of the personnel provision and selection regime and, in this sense, provide for the need to publish the person finally selected and their appointment, among

For the purposes that interest us in this analysis, to the extent that the regulations provide for the need to advertise, for example, the appointment of personnel in the service of the public administration, in which the workplace to which s 'attributes and incorporates other information related to the site's characteristics (group, level, category...), while providing for active advertising regarding the relationship between jobs and the workforce, in the terms that have been set forth. It is clear that, just taking into account the regulations on active advertising, there is already a reasonable probability of relating this information to a particular person.

Ultimately, in the case at hand, it would not seem consistent to deny the intended access to the job code, its classification (job class, linkage type, access group, destination level and provisioning system) , category, position requirements, skill level and assigned functions, as well as the schedule (full-time) and the remuneration system applicable to both employees of the entity, insofar as the provisions relating to the publicity of the list of positions of work and that which affects calls and personnel selection processes, already allow us to consider that there is a reasonable probability of relating all this information to the two workers.

Secondly, in favor of the prevalence of the claimant's right of access to public information over the right to data protection of both workers, the provision of article 24.1 of the LTC must be taken into account. It should be remembered that this article provides that access to public information must be given if it is information directly related to the organization, operation or public activity of the administration, as long as it contains merely identifying personal data and unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

It is worth saying that, although the claimant does not request to know or access merely identifying data, to the extent that the information he seeks to access is related to the jobs of two workers identified in his request, and to the extent that from the analysis of article 24.1 of the LTC it follows that access must be given to the information that can allow to know, among other data, the functions carried out by the staff in the service of the administration public, it would not seem justified that the request for access should be denied by way of weighting.

From the point of view of the right to data protection, one of the circumstances that can be taken into account is the purpose of the access (art. 24.2.b) LTC). In this sense, although article 18.2 of the LTC provides that the exercise of the right of access is not conditional on the concurrence of a personal interest, and does not remain subject to motivation or require the invocation of any rule, knowing the motivation for which the person making the claim wants to obtain the information can be a relevant element to take into account.

Based on the information contained in the file sent, there are no elements that allow us to deduce the purpose of requesting access to the job code, classification (class of position, type of association, access group, destination level and provision system), category, position requirements, skill level and functions of each of the workers, as well as the schedule (full-time) and the remuneration system. As can be seen from the statements of the affected workers in their letters of opposition to the communication, the person making the claim could have submitted the request for access as a result of being dissatisfied with

an administrative procedure in the processing of which they would have intervened in the exercise of their functions. Be that as it may, this purpose would not be opposed to what pursues the transparency regulations, that is, the control by citizens of certain aspects of the activity of the administrations.

In any case, the fact that the affected people have opposed it would not be a decisive element when deciding the weighting, given that, beyond expressing their opposition, they have also not provided any element that affects their private life that justifies limiting access.

It is clear that the communication of this information entails an intrusion into the right to data protection of both workers, which may affect not only their professional or work sphere, but also the strictly personal or the patrimonial sphere, in the measure that allows you to recognize not only data relating to your employment but also others that may affect your private life more directly, such as the working hours or the approximate level of income from your work. However, in line with what has been analyzed up to this point in relation to the regime of active advertising, it does not seem that in the case in question there are circumstances from which it can be considered that the interference with the right to data protection, when communicating this information to the claimant, is superior or aggravates that caused by the application of the active advertising regime.

v

In relation to the request for information regarding the access by both employees of the entity to their workplaces, the claimant requests access to the announcement of the call, the bases, the first and last names and four numbers of the identity document of the persons admitted to each test or exercise of the selection process and of the person finally selected, together with the scores obtained, and the date of appointment.

In the case of Ms. A -according to the content of the email addressed to the City Council on March 29, 2021- the person claiming states that if the incorporation procedure of Ms. As a result of the deletion of a supra-municipal entity identified in the application, the specific agreements and supporting documentation justifying its affiliation to the entity are requested.

With regard to access to the announcement of the call, the bases, the names and surnames and four numbers of the identity document of the persons admitted to each test or exercise of the selection process and of the person finally selected, together with the scores obtained, and the date of appointment, in the first term it is necessary to refer to article 55 of the EBEP which states that public administrations must select their civil and labor personnel through procedures in which the constitutional principles of equality, merit and ability, as well as the publicity of calls and their bases, and transparency, among others.

At the local level, article 286 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC) provides in terms similar to the 'EBEP that access to the status of career official or labor personnel of local corporations must be done in accordance with the public offer of employment, through a pub

compliance with the constitutional principles of equality, merit and capacity must be guaranteed, as well as the announcement of calls must be published in the BOP and the DOGC.

On the other hand, Decree 214/1990, of July 30, which approves the Regulations for the staff at the service of local entities, regulates the different access procedures for the staff of local administrations, and to that end contains provisions relating to the publication of the announcements of the calls, the bases, etc. Such as article 76, relating to civil servants, in which it is foreseen the need to publish the call to the DOGC and the BOP together with the bases, or article 90, in the case of labor personnel, which also provides the need to publish it in the DOGC and the BOP, together with the bases.

With regard to the basis of the calls, article 70 of Decree 214/1990 provides that they must contain:

"a) Number, nature and characteristics of the places subject to call, and express determination of the scale, subscale and class to which they belong; indication of the degree group to which each one corresponds and determination of those reserved for internal promotion, if applicable. b) Selective system. c) Aptitude or knowledge tests that must be passed, and determination of their number and nature. d) The conditions and requirements established in the following article. [...] f) Selective tests that must be carried out and, where applicable, list of merits that must be taken into account in the competition phase, as well as the accreditation and assessment systems these merits. [...] h) Qualification system and minimum score for each test. [...] k) Action order of the applicants according to the result of the draw previously carried out, if applicable. l) Express declaration that the courts cannot approve or declare that a greater number of applicants have passed the selective tests than the number of places subject to the call. m) Designation of the multiprofessional team for the purposes of article 77 of these Regulations."

And in relation to the entry procedure itself, the Decree also provides for different provisions relating to the publication of the administrative acts that are carried out, such as the need for the publication of the list of admitted and excluded (art. 78) ; list of those approved by score order (art. 80); the appointments of civil servants, to the BOP (art. 82 and 84), etc.

On the other hand, article 9.1.e) of the LTC foresees that the public administrations must publish the calls and the results of the selective processes for the provision and promotion of personnel. And, in accordance with article 21.1 of the RLTC, this duty applies to:

"a) Procedures for access to the bodies and scales of official, statutory and labor personnel. 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."

At the same time, article 21.2 of the RLTC provides that the data to be published must refer "[...] at least to the announcement of the call, the bases, the official announcements and the first and last names and to the four numbers of the national identity document or equivalent document of the persons admitted to each test or exercise of the processes and of the person finally selected, in accordance with the criteria established in the field of data protection."

From everything that has been presented, it follows that both the transparency regulations, in accordance with the provisions of the LTC and the RLTC, as well as the local regime regulations, provide for different advertising obligations in relation to with the calls and selection processes of the administrations. To the extent that the regulations themselves provide for the need to publish personal data related to the various administrative acts of the selective processes, in principle it does not seem that the regulations for the protection of personal data can prevent access to the identity of the selected persons (in in this case Messrs. A and B) and the score obtained, given that they become relevant elements when it comes to being able to control that the acquisition of the status of public administration staff has been carried out by the procedure and d in accordance with the established requirements. The publicity of the appointment, and therefore of the date of appointment, is something that must be available indefinitely for general public knowledge. Therefore, providing this information through the right of access does not entail a higher interference for the selected persons than that which already derives from the regulations themselves that regulate

With regard to the data linked to the scores obtained, providing this information through the right of access may lead to an interference with the right to data protection that goes beyond that derived from the publication during the selection process , given that the publicity of that information is maintained only for a time while the selection process is carried out. However, in the case of the selected person, providing this information may be justified in order to be able to know the conditions under which the affected person has accessed their workplace, making a comparison with the rest of the applicants, and without that this involves revealing specific information about the selected person, given that revealing the score does not involve revealing the exercises carried out, nor the specific facts that have

On the other hand, with regard to the people not selected, providing information about their identity and about the scores obtained does not seem to be relevant when carrying out the control of the administrative action. Well, beyond the jurisdictional control that the affected people themselves have been able to exercise, control by the general public, or by the specific person who exercises the right of access, can also be achieved through anonymized information. On the other hand, the interference with the right to data protection, or the consequences of the knowledge of this information in the private life of the people affected, can always be greater for people who have not passed the process, than for those selected people, given that what it highlights is that they participated in that process (a circumstance that in principle has no reason to be known in their social or work sphere), and that they did not pass the process.

For this reason, it must be considered that in the particular case the right to data protection does not prevent the provision of information relating to the announcement of the call, the bases, and the scores obtained by the two persons referred to in the sole request and the date of his appointment, to the extent that this information may allow the claimant to exercise control over the actions of the administration derived from the selection processes. On the other

information about the rest of the people participating in the call, so it should be provided anonymously.

VI

In relation to the information requested regarding Ms. A, regarding the specific agreements and other supporting documentation justifying the assignment of Ms. In the entity, reference must be made to the regulations relating to the abolition of the supra-municipal entity in question.

In accordance with this regulation, a mixed commission had to be created with the aim of drawing up a proposal for the distribution of powers, activities and services of the supra-municipal entity, which would include, at least, and among other data, the distribution of personnel. This proposal had to be submitted to the department of the Generalitat competent in matters of local administration.

In the case at hand, however, the claimant requests access to the specific agreements and supporting documentation justifying the assignment of Mrs. To the entity.

In accordance with the amended regulations, it is foreseeable that these agreements will at least include the identification data of the members of the mixed commission as well as of the personnel affected by the deletion of the supra-municipal entity, to the extent that it will include, as minimum, the agreed destination.

From the point of view of article 24.1 of the LTC, there must be no impediment in granting access to the merely identifying information of the members of the mixed commission that may be contained in the documentation to which it is intended access For this purpose, it is necessary to take into account article 70.2 of the LTC which provides that "[...] are merely identifying personal data consisting of the name and surname, the position or position held, body and scale, the functions developed and the telephone and addresses, postal and electronic, of professional contact, referred to the staff in the service of the public administrations, high positions and managerial staff of the public sector of the 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 capacity of position or staff in the service of the public administrations.[...]"

On the other hand, and given, as has been explained, the principle of publicity regarding the acquisition of the status of staff in the service of public administrations, the data protection regulations would not prevent knowing those parts of the agreements either that affect Ms. A, with regard to its affiliation to the entity. This information constitutes personal information, but in line with

what has already been explained in relation to the data relating to the selective procedures, in these cases the right of access must prevail over the right to the protection of personal data.

However, according to the terms in which this information is requested, it should be borne in mind that the person making the claim is only interested in knowing this information regarding one of the organization's workers. Thus, from the point of view of data protection and, in particular, the principle of data minimization (art. 5.1.c) of the RGPD) from which personal data must be adequate, relevant and limited to what is necessary in relation to the intended purpose, at the outset it must be concluded that the data relating to other transferred employees of the supra-municipal entity that may be included in the agreements should be excluded from access. And although in principle the identifying information of the members of the mixed commission could be given (ex art. 24.1 LTC), in the specific case it does not seem that the interested person is interested in this information, therefore, in this specific case should also be excluded from access.

Beyond this, in the agreements of the mixed commission of transfers, there may be other information linked to the contractual conditions of the transferred personnel, the seniority or the administrative situation of the transferred personnel at the time they were taken to term. Given that the information requested is limited to the supporting documentation that justifies the assignment of Ms. To the entity, it does not seem necessary to analyze the possibility of delivering this information, given that in principle it is not part of the requested information.

Thus, in accordance with the circumstances of the particular case, it is considered that the claimant's right of access to public information must prevail with regard to knowing the part of the agreements of the mixed commission where justified the assignment of Ms. To the entity. On the contrary, and in application of the principle of data minimization, it would not be justified, from the point of view of data protection regulations, to give access to the data of the members of the mixed commission that may be contained in the agreements, to the data of the rest of the staff affected by the transfers or the contractual conditions, seniority or administrative situation.

conclusion

The data protection regulations do not prevent knowing, in the terms set out, the information contained in the list of jobs, as well as the information related to the access procedure regarding the identity and scores obtained and date of appointment or, where appropriate, the part of the transfer agreements that accredits the membership of Ms. To the entity.

On the contrary, access to the identity and scores of the other people who had participated in the selection process would not be justified, nor, given the circumstances in the particular case, the data of the members of the mixed commission, the data of the rest of the staff transferred, or other data of Ms. In addition to their contractual situation, seniority or administrative situation that could be included in the aforementioned transfer agreements.

Barcelona, May 21, 2021