

IAI 38/2021

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against a city council for the denial of access to the list of the Urban Guard personnel of the municipality.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim presented against a city council for the denial of access to the list of the Urban Guard personnel of the municipality with name, surname, official number and place of service.

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, I inform you of the following:

Background

1. According to the information provided by the GAIP, on February 23, 2021, the applicant, on behalf of a trade union, by means of an office presented to the AOC Consortium, requests the city council claimed the list of personnel providing services to the Guardia Urbana of the claimed municipality.
2. On April 12, 2021, the claimant submits to the GAIP a claim against the city council in which he claims the list of the Urban Guard personnel of the municipality with name, surname, official number and place where provides service In the claim it is stated that he needs the requested information to be able to carry out his trade union activity.
3. On April 14, 2021, the GAIP requests the claimant to prove whether he is acting on behalf of the applicant or if both are acting in the capacity of union representatives or union workers' representatives. In the documentation accompanying the report request, there is a document signed on October 29, 2019 by the organizing secretary of the union in which the condition of LOLS delegate requesting in place of the claimant is stated. We therefore understand that the claimant acts on behalf of the applicant.
4. On April 21, 2021, the GAIP requests the city council complained about to issue a report on the complaint presented, identify the third parties affected by the access and send the completed file to it reference
5. On May 13, 2021, the claimed municipality issues a report in relation to the claim presented, which states:

"On May 13, 2021 we gave an answer (ATTACHED TO THE DOCUMENTATION ATTACH the request and the response), in which we highlight and reiterate the literal response issued by the Security and Prevention Management as well as the People Management and

Organizational Development to all the representatives of the trade unions who are members of the General Negotiation Committee of the City Council (...). While indicating that with regard to the request for the list of the Urban Guard personnel indicating the registration number, name and surname, category and unit where they provide service, no personal data will be provided without the consent of the interested parties.

6. On May 27, 2021, the GAIP addresses the request for a report to this Authority in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to 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 claim that is the subject of this report requests access to information relating to the list of the staff of the Urban Guard of the city council claimed with an indication of the first name, surname, official number and place of service, which incorporates personal data of public employees what does it refer to

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), defines personal data as "all information about 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 4.1 RGPD).

According to article 4.2 of the RGPD "consultation, use, communication by transmission, dissemination or any other form of enabling access, access or interconnection, limitation, deletion or destruction" are data treatments personal data subject to the principles and guarantees of the RGPD.

The RGPD provides that all processing of personal data must be lawful, loyal and transparent in relation to the interested party (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 its article 6.1 to apply. Specifically, sections c) and e) of article 6.1 of the RGPD provide respectively, that the treatment will be lawful if "it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment", or if "it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment".

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

At the same time, 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, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC hereinafter) aims, among others, to "regulate and guarantee people's right of access to public information and documentation" (art. 1.1.b).

Specifically, article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity legally constituted" (section 1). The mentioned article 2.b) defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law".

The information that is the subject of the claim presented by the trade union representative to the city council of the claimant is "public information" for the purposes of the LTC and remains subject to the access regime provided for in these regulations.

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

The requester of the information, according to the documentation provided, is a trade union delegate appointed under article 53 of the Agreement governing the working conditions of public employees of the respondent city council. Therefore, at the outset it will be necessary to take into account the provisions that specifically regulate the access of workers' representatives to certain information necessary for the exercise of their functions, fundamentally the Royal Legislative Decree 5/2015, of 30 d October, which approves the revised text of the Law of the Basic Statute of the Public Employee (EBEP) and Organic Law 11/1985, of August 2, on Trade Union Freedom (henceforth, LOLS), as well as the Agreement governing the working conditions of public employees of the City Council claimed.

This without prejudice to the supplementary application of the LTC.

III

In accordance with the provisions of article 40 of the EBEP, the functions of the workers' representative bodies are as follows:

"1. The Personnel Boards and the Personnel Delegates, as the case may be, will have the following functions, in their respective areas:

a) Receive information on personnel policy, as well as on data relating to the evolution of remuneration, likely evolution of employment in the corresponding field and performance improvement programs.

b) Issue a report, at the request of the corresponding Public Administration, on the total or partial transfer of the facilities and implementation or review of their organizational systems and work methods.

c) Be informed of all the sanctions imposed for very serious faults.

d) Have knowledge and be heard in the establishment of the working day and working hours, as well as in the holiday and leave regime.

e) Monitor compliance with current regulations regarding working conditions, prevention of occupational risks, Social Security and employment and exercise, as the case may be, the appropriate legal actions before the competent bodies.

f) Collaborate with the relevant Administration to achieve the establishment of measures to maintain and increase productivity.

2. The Personnel Boards, collectively, by majority decision of their members and, where applicable, the Personnel Delegates, jointly, will be authorized to initiate, as interested parties, the corresponding administrative procedures and exercise administrative or judicial actions in everything related to the scope of their functions."

On the other hand, it should be borne in mind that article 10.3 of Organic Law 11/1985, of August 2, on Freedom of Association (from now on, LOLS) provides for the following:

"Union delegates, in the event that they are not part of the works committee, will have the same guarantees as those legally established for the members of the works committees or the representative bodies that are established in the Public administrations, as well as the following rights except for what could be established by collective agreement:

1.º Have access to the same information and documentation that the company makes available to the works committee, union delegates being obliged to keep professional secrecy in those matters in which they legally proceed. [...]

This article equates the information to which trade union delegates can access to that to which it is planned that workers' representative bodies can access.

With regard to the specific regulations of the respondent city council, the Agreement governing the working conditions of public employees of the respondent City Council, in its article 49, recognizes the following powers for the trade union sections:

"The Corporation expressly recognizes the following powers for the different union sections with a presence in the representative body: a) Collect the economic, professional, social and union demands of the various work centers and raise them with the Corporation and the same representative body. b) Represent and defend the interests of your trade union organization or its affiliates and serve as an instrument of communication between your organization and the Corporation. c) Not to be discriminated against in economic and professional promotion due to the development of the representation. d) Convene assemblies in the work centers whenever the circumstances require it, in the terms provided for in article 50."

In the case in which we are concerned with access to the list of all Guardia Urbana personnel with name, surname, official number and place of service by the trade union representative without any other justification than the development of trade union functions, it would not be enabled expressly in the control functions attributed by sections a) and e) of article 40.1. of the EBEP, nor in the own regulations of the claimed municipality.

In this sense, the recent ruling of the Supreme Court of STS 9-2-21, which establishes essential doctrine in the matter, makes the following considerations:

"(...) Well, neither the expressed article 10.3.1^a, for what refers to the equalization, for these purposes, of the union delegates, with the representative bodies that are established in the Public Administrations, regarding the "access to the same information and documentation", nor the aforementioned article 40.1.a) which indicates as a function of the staff delegation "to receive information, on the personnel policy, as well as on the data relating to the evolution of the remunerations, probable evolution of employment in the corresponding field and performance improvement programs", describe a legally provided assumption that excludes the consent of the interested parties for the purposes of article 11.2.a) of the 1999 Law, in a case such as the one examined in what is requested is a large and indiscriminate transfer of data, without providing a minimum explanation, at the time of your request, of the need or relevance of these data for the exercise of your trade union duties. (...)

It is relevant, therefore, that it mediates the proper relationship between the personal data of the statutory staff that are requested, with the important trade union function that is carried out. So that only when these personal data are necessary for the exercise of trade union work, they could be considered exempt from consent, but not when they are disconnected or their relationship is unknown, as their connection with said trade union functions has not been made clear. (...)

Consequently, the mere invocation, without justification, of the trade union representation cannot serve as an excuse to access all types of documentation, if it is not wanted by this means to empty the content of the fundamental right to data protection, when the holder de los mismos ignore the use that is made of their data, losing their power of disposal, in cases where the occurrence of any of the legally established exceptions is not justified."

To the extent that it does not appear that the specific regulations analyzed enable access to the specific information requested, this access will need to be analyzed applying the transparency regulations.

IV

It should be borne in mind that the right of access to public information regulated in the LTC is not configured as an absolute right but can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of the articles 23 and 24 of the LTC regarding personal data

It can be ruled out that the requested information contains data deserving of special protection in the terms provided for in article 23 LTC, in which case it would be necessary to preserve its confidentiality and limit access, unless with the request the express consent of the affected persons was provided.

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 the

"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.

[...]."

It can be advanced that, from the point of view of data protection regulations, there should be no impediment to providing the trade union representative with the information relating to the list of jobs requested, without including the identification data of the personnel who occupy them .

Thus, article 74 EBEP, establishes that public administrations, "will structure their organization through job relations or other similar organizational instruments that will include, at least, the designation of the positions, the professional classification groups, the bodies or scales, as the case may be, to which they are attached, the systems of provision and complementary remunerations. Said instruments will be public"

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 the

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 jobs, have to assign the functions, attributions and tasks to be carried out by the staff who occupy the respective jobs, specifying in the case of civil servants, the scale, sub-scale, class and category to which the person must belong who occupies each job (art. 29).

Article 30.2 of the Regulation 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."

With regard to the obligations of active publicity, article 9.1.d) of the LTC, establishes that the information relating to the institutional organization and the administrative structure that the Administration must make public by application of the principle of transparency must include: "the list of workplaces of official, labor and casual staff, and the staff and the list of temporary contracts and internships not linked to any workplace in said relationship".

This article has been developed by article 20 of the RLTC which establishes:

1. For the purposes of letter d) of article 9.1 of Law 19/2014, of December 29, public administrations must publish:

a) The list of positions of official, labor and temporary staff, in accordance with the minimum content provided for in the current regulations on public service.

b) The list of temporary contracts and internships not linked to any job in the list of jobs.

And, specifically for local administrations it is foreseen that they must publish:

3. The local administrations, additionally, must publish the personnel template with the detailed list of bodies, scales, sub-scales, classes and categories of the positions in which civil servants, labor personnel and contingent personnel are integrated, and they must indicate the 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 matter of civil service."

However, the object of the claim is to access a list of jobs that also includes the first and last names and the official identification number corresponding to each of these jobs.

From the point of view of data protection regulations, the analysis of access to this information must go through a prior, reasoned weighting between the public interest in disclosure and the right to data protection of individuals affected, based on the different elements listed in the aforementioned article.

A relevant element in weighing the public interest in the disclosure of information and the rights of individuals is the nature of the information to which access is sought.

It must be taken into consideration that the EBEP establishes that the selection processes of civil and labor personnel in the field of Public Administrations are subject to a series of principles, among others, that of publicity and that of transparency (art. 55.2.a) ib) TRLEBEP).

Article 64 of Legislative Decree 1/1997, of 31 October, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in matters of public function, regulates the content and publicity of the calls for competition and those for free designation, which must be published in the DOGC. Section d) of article 64 specifies that "The resolutions of the calls, both those of the merit competition and those of free appointment, are published in the DOGC."

At the local level, article 80 of Decree 214/1990, of July 30, which approves the Regulations for personnel in the service of local entities, provides that "once the tests have been completed, it must make public the list of applicants in order of score, which cannot contain a higher number than the number of vacant places offered." Thus, the regulations provide that the list of selected persons is of general knowledge, and, article 82 of Decree 214/1990, expressly provides that "the appointments must be published in the BOP".

In addition, personnel selection processes involve competitive competition, and therefore there would be legal authorization to advertise the list of people finally selected for public administration jobs, as established in the Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (LPAC) in relation to the notification of resolutions and administrative acts (art. 40 et seq. LPAC), specifically, in article 45.1. b), according to which the administrative acts must be published: "When these are acts that are part of a selective or competitive procedure of any kind. (...)."

From the perspective of transparency legislation, specifically, the obligations of active advertising, article 9.1.e) of the LTC establishes that the information relating to the institutional organization and the administrative structure that the Administration must make public in application of the principle of transparency must include: "The calls and the results of the selective processes for provision and promotion of personnel".

Article 21 of Decree 8/2021, of February 9, on transparency and the right of access to public information, has come to specify the provision of Article 9.1.e) LTC, and provides that:

"1. For the purposes of letter e) of article 9.1 of Law 19/2014, of 29 December, public administrations must publish the calls for proposals and the results of:

a) Access procedures 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.

2. The data to be published must refer, at least, to the announcement of the call, the bases, the official announcements and the name and surname and the four numbers of the national identity document or equivalent document of the persons admitted to each test or exercise of the process and of the person finally selected, in accordance with the criteria established in the field of data protection. (...).”

Therefore, to the extent that the civil service regulations provide for the need to advertise the appointments of personnel in the service of the public administration, at the same time that the transparency legislation provides for active advertising regarding personnel selection processes that must include the name and surname of the selected persons, it is clear that the information to which you want to access has already been the subject of advertising and therefore no additional damage will occur to these persons due to the fact of communicating their data.

Secondly, in favor of the prevalence of the trade union representative's right of access to public information over the data protection right of the affected 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.

Likewise, 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 subject to motivation nor does it require the invocation of any rule, knowing the motivation for which the person claiming wants to obtain the information may be a relevant element to consider.

In the case we are dealing with, the claimant states that the purpose of the access is to be able to exercise his trade union function.

As has been explained, sections a) and e) of article 40 1 of the EBEP attribute to the representatives of the workers, and by extension in accordance with article 10.3 of the LOLS to the trade union delegates, functions relating to the control of the verifiable evolution of employment and the monitoring of compliance with current rules regarding working conditions and employment.

This control function coincides with the purpose of the Transparency Law, to establish a system of relations between people and the public administration and other obliged subjects, based on the knowledge of public activity, the incentive of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of retention

of accounts and responsibility in public management, as can be seen from article 1.2 LTC. That is to say, to offer tools to citizens to control the actions of public authorities.

Thus, if the citizens must be able to have this ability to control the actions of the Public Administrations, with more reason, if applicable, it will be necessary to recognize this ability to the trade union delegates who have been assigned these functions by the specific regulations (EBEP and LOLS) .

On the other hand, the weighting must take into account the possible harm that could be caused to the persons concerned by the disclosure of their personal data associated with their workplace.

It is clear that the communication of the identification data and the position occupied by the urban guard personnel entails an intrusion into the right to data protection of the workers, which may affect not only their professional or work sphere, but also strictly personal, to the extent that it allows to know not only data relating to their occupation but also others that may affect their private life more directly, such as whether they are part of the Urban Guard, or even, from the information regarding your destination, other information could be inferred such as working hours, workplace, etc.

However, the privacy expectations that the affected persons may have regarding their identifying data and the specific job they occupy are conditioned by the active advertising obligations of the selection processes in which they have participated and by their condition of 'public employees.

Therefore, it does not seem, in principle, that the interference in the right to data protection, by communicating the requested information to the person making the claim, is superior to or exacerbates that caused by the application of the regime of the publicity of the public service regulations or the active advertising regime of the active transparency regulations.

However, it must be taken into account that the people concerned are agents of the urban guard, and this is an element to be taken into account in the weighting because it is information that affects security forces.

Thus, the sectoral regulations applicable to the security forces, provide that they are identified with a professional identity card (TIP) in place of the first and last name, for security reasons. Law 4/2003, of April 7, on the organization of the public security system of Catalonia, provides in article 25 ter that "All members of local police forces must carry a professional accreditation document. " (...) "This document must include, at least, the municipality of affiliation, the identification of the professional category and the individual registration number. (...)."

In this sense, article 70.3 of the RLTC has provided that in the case of members of the forces and security forces, their identification with names and surnames must be replaced by the publication of a code or professional identification number. These forecasts should have meant that in the publications to which reference has been made, or in others that may be foreseen by the legal system, the identification of the agents should have included only the TIP number.

In the case at hand, the generic purpose set forth (exercise of the functions that correspond to him as a trade union delegate) does not imply the need to jointly obtain the data

relating to the agents' first and last names together with their TIP number. The request certainly shows the desire to be able to individualize the information, but to do so it is not necessary to include the names and surnames of the people affected, but it can be done perfectly by including only the TIP number.

For this reason, it would be clearly disproportionate in the case at hand to jointly provide the agents' first and last names together with their TIP number. The requested information should be provided exclusively with the TIP number.

Although we cannot ignore that the TIP identifies or, at least, makes the holder identifiable, especially in this case where the person accessing the information is a union representative of the City Council workers, and given the regulatory provisions on active advertising in relation to the appointment of public officials (art. 9.1.e) LTC) providing the information requested with this identifier without the first and last names of the interested parties would be clearly less intrusive in accordance with the principle of data minimization (art. 5.1 .c) RGPD.

For all that has been said, the degree of impact on the privacy of the people affected would justify the requested information being provided by identifying the interested parties solely through their professional identification number (TIP).

Conclusions

The data protection regulations would not prevent the trade union representative from accessing the list of Guardia Urbana personnel of the requested town hall by identifying them with their professional identification number (TIP) and the place where they work.

Barcelona, June 22, 2021