

IAI 40/2021

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Information Public in relation to the claim presented by a representative of the workers against an organization for the denial of access to the list of requests for voluntary mobility of statutory staff of a Territorial Management

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the Claim submitted by a representative of the workers against an organization for the denial of access to the list of requests for voluntary mobility of statutory staff of a Territorial Management.

After analyzing the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the report of the Legal Counsel, the following report is issued:

Background

1. On February 24, 2021, a citizen submits a letter to the organization in which he requests the "Voluntary mobility list, of statutory personnel, permanently open (to the Territorial Administration)". Specifically, it requests:

"The list of requests for voluntary mobility, of statutory staff, permanently open for primary care of the public company Institut Català de la Salut, made by the staff of the Territorial Management... identifying them with their first and last name and the 4th, 5th, 6th and 7th digits of the NIF, specifying the SAP requested, the assistance devices requested, and the date of the request."

2. The file contains a copy of the organization's Resolution, dated March 21, 2021, addressed to the applicant, according to which the requested information would be published in the provisional list of persons admitted and excluded from the participation in the single call for the open and permanent transfer competition planned for the Health Sectoral Board, approved by the Resolution SLT/2099/2020, of August 25, information that would be available, according to the Resolution, on the Transparency Portal.

3. On March 22, 2021, the claimant, who signs as "representative of the workers", submits a letter to the ICS in which he explains that his request has nothing to do with the call approved by the SLT/2099/2020 Resolution, but with the TSF/993/2016 Resolution, of April 18, which provides for the registration and publication of the Pact of the sectorial negotiating table for health voluntary mobility, of personnel statutory, permanently open for primary care of the public company Institute Català de la Salut. Consequently, the claimant requests a rectification of the Resolution of March 21 and that his request be granted.

4. On May 5, 2021, the applicant submits a complaint to the GAIP, in which he states that he has asked the organization for the list of requests for voluntary mobility in the terms referred to, and indicates that you have been denied access to the information. Specifically, he explains that the organization would have resolved that the requested information is published on the Transparency Portal as well as in some facilitated links, but that this is erroneous, since the request is related to the TSF Resolution/ 993/2016, and which has submitted an appeal for reinstatement on March 22, 2021, regarding which it would not have received a response.
5. On May 13, 2021, the GAIP informs the body of the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to public information , and the identification of the third parties affected, if any.
6. On June 3, 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.
7. On June 10, 2021, the GAIP sent this Authority additional documentation to the file, among others, a copy of the body's Resolution of May 18, 2021, in response to the appeal for replacement of the claimant (March 22, 2021), in which it is decided to partially estimate the claimant's appeal and deliver an explanatory list of the requests made to which the request refers, without including personal data (name, surname and ID of the applicants), and a copy of the body's report, dated June 2, 2021, addressed to the GAIP. In this report, among others, the GAIP is informed that the preparation of the list of affected third parties is pending, for its transmission to the GAIP.
8. In the same report of June 2 (paragraph 6), the body states that on May 23, 2021, the claimant would have submitted an extraordinary review appeal against the Resolution of May 18, "because the information provided it does absolutely nothing to satisfy the requests made", so he requests again access to the list of requests for voluntary mobility.

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must issue a report to the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected (Article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereafter, RGPD).

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

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29 , of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

II

The complaint is lodged against the denial of access to individualized information, specifically, the list of requests for voluntary mobility of the statutory staff, permanently open for the primary care of the ICS, made by the staff of the Territorial Management, identifying the affected persons with their first and last names and certain ID numbers.

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

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

a) Statutory personnel of the health services, which is governed by State Law 55/2003, of December 16, of the Framework Statute of the statutory personnel of the health services, and by the deployment regulations that approve the Generalitat (...). (...)."

Resolution TSF/993/2016, to which the claimant refers, aims to "facilitate the voluntary mobility of statutory staff within the scope of primary care of the same Territorial Management" (point 1 Resolution).

Therefore, the information requested by the claimant relates to the statutory workers of the ICS. The data of the statutory staff of the ICS, which identify them or which allow their identification, such as the information relating to a voluntary mobility request made

by a specific and identified worker, are personal data and are protected by the principles and guarantees of the data protection regulations (RGPD).

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

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

State Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The information relating to the requests for voluntary mobility of statutory workers of the ICS, subject of the claim available to the body, is "public information" for the purposes of article 2.b) of the LTC, subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 et seq. LTC). Specifically, and with regard to information containing personal data, as would be the case, it will be necessary to assess whether or not the right to data protection of the affected persons would justify the limitation of the right of access to public information regulated in the LTC.

III

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

The claimant signs his letter of March 22, 2021 (appeal for reinstatement), as a "representative of the workers", although there is no information in the file about this status as a representative of the ICS workers by the claiming In the organization's Resolution of May 18, 2021 (FJ 4), it is mentioned that the claimant "formulated his request as a natural person and in his own name, although his request may be motivated by the union tasks he carries out in his capacity as a union delegate and member of the Personnel Board."

For this reason, it is necessary to take into account in the first place the forecasts that may affect in the event that the person making the claim is considered to be a representative of the workers, as is the case at hand, given the information available.

According to the regulations, they are the staff boards or delegates (art. 39 Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the public em

TRLEBEP), the specific bodies representing civil servants, and as such they exercise the functions granted to them by the corresponding regulations (art. 40 TRLEBEP), among others, the function of monitoring compliance with the regulations, which is granted to them by right to obtain certain information for the development of their functions of negotiation and defense of workers' rights. According to article 40.1 TRLEBEP, boards and staff delegates have the following functions, among others:

"a) Receive information, on personnel policy, as well as on data relating to the evolution of remuneration, probable 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.;

(...)

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; (...)"

Given that the request for information refers to statutory staff, we note that according to article 79.1 of the Framework Statute, "1. The collective negotiation of the working conditions of the statutory personnel of the health services will be carried out by means of the representative capacity recognized to the trade union organizations in the Constitution and in the Organic Law 11/1985, of August 2, on Freedom of Trade Unions." (LOL).

According to article 6.3 of the LOLS: "3. The organizations that have the consideration of the most representative union according to the previous number, will enjoy representative capacity at all territorial and functional levels for:

a) Show institutional representation before the public administrations or other entities and organizations of a state or autonomous community character that has it planned. (...) c) Participate as interlocutors in the determination of working conditions in Public Administrations through the appropriate consultation or negotiation procedures. (...)."

And according to article 80.2 of the Framework Statute, matters relating to the selection of statutory personnel and the provision of places must be subject to negotiation at the negotiation meetings (art. 80.1), among other issues, including the global work offer of the health service (section d)), human resources management plans (section g)), and, in general, all those matters that affect working conditions and the scope of relations of statutory staff and their trade unions with the Public Administration or the health service (section k)).

The information relating to the organization of the human resources of the ICS, in particular, certain information on the mobility requests of the statutory staff referred to by the claimant,

is information that, given the aforementioned regulatory provisions, could be communicated to the workers' representatives as general information, without it being possible to derive from these provisions, that the information must necessarily be provided associated or individualized for each worker affected

At this point, the STS of February 9, 2021 (rec. 1229/2020) is of particular relevance, regarding the communication to trade union delegates and workers' representatives of their personal data, based on the regulatory framework that regulates the right of information of these representatives, sentence to which the Resolution of May 18, 2021 makes express reference, as well as the report addressed to the GAIP, dated June 2, 2021.

According to the fifth FJ of the said STS: "(...), the mentioned articles 40.1.a) of the TR of the Basic Law of the Public Employee, 10.3.1^a of the Organic Law of Trade Union Freedom, which invokes the part appellant, in addition to the general article 64 of the Workers' Statute, attribute rights of information to the trade union representatives of the workers, in this case, of the statutory staff, which are essential for the exercise of their work of control and the defense of the interests of the workers."

According to the sixth FJ of the same STS of February 9, 2021: "... we must find out if the precepts invoked -- articles 40.1.a) of the TR of the Law of the Basic Statute of the Public Employee, and 10.3.1^a of the Organic Law of Freedom of Association--, are an exception to the requirement of consent. Bearing in mind that the requested documentation involves a massive dump of data, in the terms transcribed in the previous foundations.

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 "access to the same information and documentation", nor the aforementioned article 40.1.a) which states that it is the function of the staff delegation "to receive information, on the personnel policy, as well as on data relating to the evolution of remuneration, probable evolution of employment in the corresponding scope and performance improvement programs", describe a legally provided case 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 which a substantial 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 representative cannot be used as an excuse to access all types of documentation, if it is not wanted in this way

void the content of the fundamental right to data protection, when the owner of the same ignores the use that is made of his data, losing his power of disposal, in cases where the concurrence of any of the exceptions is not justified legally established."

Without prejudice to the fact that the STS of February 9, 2021, mentioned, refers to an assumption and a type of information from the workers that is not the same as in the case at hand (and which the STS itself qualifies as "substantial and indiscriminada cesion de datos"), it should be noted that in the case at hand the claimant requests information on the list of requests for voluntary mobility individually and with the direct identification of these workers (name and surname, and ID numbers), without providing more arguments or justification for this request than his status as "representative of the workers".

Given the provisions of the specific regime applicable to the right of access to information of the workers' representatives in the applicable regulations, and given that the claimant simply invokes his status as a worker's representative without further specification regarding the need or membership to access the individualized information, it does not appear that based on this regulation the representative of the workers must necessarily access the information requested with direct identification of the affected workers (name, surname and part of the ID), of the affected persons that the claimant requests to meet.

However, without prejudice to this, it must be noted that the possible limitation of access to individualized information of the workers based on the provisions of the aforementioned regulations, does not exhaust the possibilities that the representatives of the workers can access this information.

In this sense, to analyze the possibility of communicating individualized information about requests for voluntary mobility of certain ICS workers, in the terms requested by the claimant, based on the provisions of the transparency legislation.

IV

The requested information is public information for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC). However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal

At the outset, it must be said that the data protection regulations would not prevent the provision of information in the terms in which this information would have already been provided (lists attached to the Resolution of May 18, 2021), specifically: "an explanatory list of the requests made by the statutory staff of the Territorial Administration ... who have asked to participate in the voluntary mobility procedure, permanently open for the primary care of the public company Institut Català de la Health, regulated in Resolution TSF/993/2016, of April 18, in the following

"a) This list will include the SAP and the assistance device requested, but it will not include the name or surname of the applicants, nor the 4th, 5th, 6th and 7th digits of the NIF. b) This list will include the date of the application, only when the applicant has not yet obtained an award."

Therefore, from the perspective of data protection regulations, the fact that the ICS provides a list in these terms, that is to say, a list that does not contain identifying data or other information that allows direct or indirect identification affected people, it would not be problematic, since no information of identified or identifiable natural persons would be given.

Having said that, given that the claimant requests individualized information, identifying those affected by first and last name and certain numbers from the DNI, we will have to adhere to what is derived from the limit consisting of the right to the protection of personal data collected in articles 23 and 2

The data referred to the list of requests for voluntary mobility, from the information available, in principle does not seem to affect particularly protected data referred to in article 23 LTC).

However, in the event that the requested information could contain other categories of personal data deserving of a special reservation or confidentiality in view of the concurrence of certain circumstances of those affected, such as, for example, data related to gender violence, this should be taken into account, since this is information deserving of a special reserve or confidentiality, since it should be borne in mind that it could reveal the existence of a situation of special need. In this regard, it is necessary to take into account the provisions of article 2 of Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against gender-based violence, which has as one of its guiding principles: "d) Guaranteeing rights in the labor and official sphere that reconcile the requirements of the labor relationship and public employment with the circumstances of those workers or officials who suffer gender-based violence." (art. 2.d))." Article 26 of the same Law refers to: "The accreditation of the circumstances that give rise to the recognition of the rights of geographical mobility of work center, leave, and reduction or reordering of work time, (...)." From the available information, we cannot rule out that in application of the voluntary mobility procedure established in Resolution TSF/993/2016 (art. 6), these elements will be taken into account, as preference criteria, with regard to the system of punctuation (art. 7), even if the Resolution does not make it clear in these terms.

Therefore, and also taking into account the provision of article 14.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), in the event that the information only requested could provide information about these circumstances, it would be necessary to limit access to the information by application of article 23 of the LTC.

Having said that, for the rest of the information, it is necessary to refer to the provision of article 24.2 LTC:

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

a) The elapsed time.

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

It should be borne in mind that the purpose of access is one of the circumstances established for said weighting (art. 24.2.b) LTC).

Although the transparency legislation does not require the person making the claim to state the reasons justifying the exercise of the right of access to public information (art. 18.2 LTC), the purpose of the access is an element to be taken into account when assessing the different rights and

According to the information available, the claimant does not argue the reasons for his request, beyond asserting his status as a representative of the workers.

In any case, the purpose of the Transparency Law is, as can be seen from article 1.2 LTC, to establish a relationship system between people and the Public Administration and the other obliged subjects, based on the knowledge of the activity public, encouraging citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management.

Thus, if citizens must be able to have this ability to control and hold public administrations accountable, with more reason, if applicable, it will be necessary to recognize this ability to a representative of the workers (the claimant links his request for information on the relationship of requests for voluntary mobility to their status as "employee representative"), in relation to information that may be relevant to the performance of their duties.

Therefore, if the claimant is part of the representative bodies of the ICS workers, this would be a relevant issue to take into account for the purposes of weighting (art. 24.2 LTC), since the regulations studied recognize the exercise of the functions of representation to the corresponding workers' representative bodies.

v

According to article 17.1 of the Framework Statute, the statutory staff of the health services have the right, among others, "e) To voluntary mobility, internal promotion and professional development, in the manner provided by the provisions in applicable in each case."

Regarding the provisions of the regulations on voluntary mobility procedures, article 37 of Law 55/2003 (Framework Statute), provides the following:

"1. In order to guarantee the mobility in terms of effective equality of statutory personnel throughout the National Health System, the Ministry of Health and Consumption, with the report of the Human Resources Commission of the National Health System, will proceed, with prior , to the approval of the different classes or functional categories of statutory personnel, as necessary to articulate said mobility between the different health services.

2. Voluntary mobility procedures, which will be carried out periodically, preferably every two years, in each health service, will be open to the participation of permanent staff of the same category and specialty, as well as, where appropriate, of the same modality, of the rest of the health services, which will participate in such procedures with the same conditions and requirements as the statutory staff of the health service that makes the call. They will be resolved through the competition system, prior to a public call and according to the principles of equality, merit and capacity.

(...)."

Thus, the applicable legislation is based on the basis that voluntary mobility procedures in this case at the ICS must be resolved through the competition system, in compliance with the principles provided for in the regulations, and prior to a public call.

The claimant requests personal information related to Resolution TSF/993/2016, which establishes "the general criteria that must govern the general bases of voluntary mobility of statutory staff permanently open for primary care" (section 1).

Therefore, it is appropriate to refer to the mechanisms established by this Resolution of 2016, regarding the procedure for candidates to access the vacancies that occur.

Section 4 of Resolution TSF/993/2016 establishes that "all permanent statutory personnel in active or similar service status in the same category in which the permanent affiliation is held, with definitive assignment (or re-entry) can participate provisional) to any Primary care device", with certain limitations established in the same section of the Resolution (for example, "contingent and zone staff (staff in non-approved positions)") cannot participate.

Section 6 of the 2016 Resolution establishes the process to be followed in this case:

"The process will be articulated through a permanently open computer register, through online registration in the Register of Preferences that will allow registration by locality and by healthcare devices, managed by the Catalan Institute of Health, existing in each locality (local offices will not be linked).

A maximum of three devices can be ordered in an orderly manner.

In the event of an unreserved vacancy, the person responsible for making the appointment proposal will first review the Register of Preferences to see if there are candidates interested in the healthcare facility where the vacancy exists."

In other words, according to the information available, the statutory workers of the ICS who are interested can register in the "preference register", in order to access the vacancies that may occur, under the terms and with the procedure provided for in the Resolution (ar

Depending on the vacancies that occur and the candidates that are there, it will be necessary to apply the scales and criteria established to select the person who must occupy the vacant position in accordance with the scale provided for in section 7 of the Resolution.

Regarding these scales, section 7 of Resolution TSF/993/2016 provides that:

"The scoring system will be the same as the scale used in the Pact of the sectoral health negotiation table for the 2013 statutory staff voluntary mobility competition, of the public company Catalan Health Institute. This section will have a weighting of 85%.

Additionally, the calculation of the average achievement of individual objectives (DPO) will be added, up to 5 of the last years. This section will have a weighting of 15%.

In the event of a tie, the same parameters will be used that, for the same purpose, are fixed in the aforementioned Pact."

From the information available, it seems that the reference to the Pact of the 2013 sectoral negotiation table (art. 7) could refer to Resolution EMO/2515/2013, of November 20, which provides the registration and publication of the pact of the sectoral health negotiation table for the 2013 statutory staff voluntary mobility competition, of the public company Institut Català de la Salut (agreement code number 79100032132013). In this Resolution it is established that in voluntary mobility processes "the services provided, the last level of professional career and the credits obtained in this last level of Catalan proficiency will be assessed, in accordance with the following distribution (...)", and the corresponding scores are established.

Given these forecasts, following the procedure established in the 2016 Resolution, in relation to which the claimant requests the information, a competitive competition procedure takes place, from the moment that several people registered in the Register could apply for the same vacancy and that, as planned (point 6 Resolution) it is necessary to take into account a series of criteria and scales to make the proposal of which candidate should obtain the position offered.

In addition, section 10 of Resolution TSF/993/2016 provides that:

"The vacancies that are generated can be filled through the definition of the professional profile if the position was previously filled through it.

In the event that it is considered that the position must be covered by means of a professional profile, it will be necessary that, prior to the start of the coverage process, this is approved in accordance with the requirements established in the temporary selection agreement. In this case, the vacancy will be offered to people registered in the Register of Preferences who meet this profile, ordered by the same scoring system that is provided for in this or, if applicable, additional tests will be carried out for registered people who meet this profile."

In any case, it is necessary to take into account the provisions of the LTC in relation to the obligations of active publicity, specifically, article 9.1.e) of the LTC, which establishes that they must be made public "The

calls for proposals and the results of the selective processes for the provision and promotion of personnel", provision in which voluntary mobility procedures should be considered included (37 Framework Statute).

In the same sense, article 21 of Decree 8/2021 establishes:

"1. For the purposes of letter e) of article 9.1 of Law 19/2014, of December 29, public administrations must publish the calls for proposals and the results of: a) Access procedures to the bodies and ranks of civil servants, statutory and labor staff. b) Internal promotion procedures. c) Provisional and definitive provision procedures. d) Procedures for the selection of temporary staff or temporary workers, including temporary staff exchanges. (...).

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

3. The update of the publication of the data is continuous, depending on the development of each call. In the event that there is no data to be published, this end must be noted."

On the other hand, as this Authority has done on previous occasions, in personnel selection processes that involve competitive competition, it must be understood that there would be sufficient legal authorization to make public the identity of the people finally selected, as foreseen to 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 (article 40 et seq. LPAC), specifically, in the article 45.1.b), according to which administrative acts must be published:

"When it comes to acts that are part of a selective procedure or competitive competition of any kind. In this case, the call for the procedure must indicate the medium where the successive publications will be made, lacking validity if they are carried out in different places."

Taking into account the forecasts in the matter of advertising regarding the identity of people who have been awarded a job through any of the forecasting processes, in principle it does not seem that it should raise problems from the point of view of law to data protection to be able to disclose the identity of people who have used the mechanism provided for in the 2016 resolution and have obtained a new job. This, unless there is a circumstance that justifies maintaining the confidentiality of the information resulting from the hearing procedure that must be carried out with the interested persons. In this regard, according to the report of June 2, 2021, addressed to the GAIP, the body would be compiling the list of those affected to send it to the GAIP, for the purposes of article 31 LTC. In any case, it is not known at the time of issuing this report that any person affected has alleged any element or personal circumstance that could justify the limitation of the claimant's right of access

For weighting purposes (art. 24.2 LTC), knowing the identity of the people registered in said preference register who obtain a vacant position, does not seem to have a special effect on the right to the protection of personal data of these people. In this sense, and from the moment they are selected, the expectations of privacy that the workers who register in the register may have, would not justify not revealing or giving access to their identity, given the forecasts of publicity derived from the current regulations.

This could also include the requested information on the date of submission of the request for participation, given that it does not entail a special intrusion for the right to data protection and, on the other hand, taking into account that the person usually bidder declares to be a representative of the workers, this information may be relevant to evaluate the operation of this mobility system.

In addition, as an added element in the case at hand, access to the identity of the people who have obtained a vacancy also does not imply access to information relating to remuneration, nor to a change in professional category nor, in short, to information about possible remunerative changes, since, according to the available information, the mobility occurs with respect to vacancies in the same category of the position that was previously occupied.

Therefore, in the weighting of the rights that must be done with respect to the request for access to information, that is, in what we could call the "public interest test" that must determine whether access to the information contributes to a better knowledge of the criteria for the organization and operation of the Public Administration, the organization of the administrative structure, and the management of requests for voluntary mobility in this case, may consider that the access to the information requested in relation to the persons who obtain a vacancy may be relevant for the control of this administrative organization, of the distribution of the cash of the ICS, and ultimately of the correlation between the workers listed in the voluntary mobility register and the effective assignment of jobs to these workers, based on the scales and

A different issue is that access must be given to the identity of all the other people registered in the Registry. In this case, it may be people registered who opted for a vacancy but who ultimately did not obtain it, or it may also be people registered and interested in places that have not yet been formally offered.

In these cases, providing the identity of people who are simply entered in the register, but who have not obtained a vacancy, does not seem to have to provide any information of interest in relation to the application of the procedure of article 6 of the Resolution of 2016, nor on the application of the scales and criteria of article 7 of the same Resolution, since this has not yet occurred, at least, in relation to these people.

Knowing the identity of all the people included in the "list of requests" that appear in the register, but who have not yet been subject to any assessment, does not seem to contribute anything for the purposes of checking whether the procedure of assignment is carried out in an appropriate

Unlike what has been explained in relation to people who actually obtain a vacancy, the mere fact of registering in the vacancy register does not imply that these people access a job, so that communicating their name, surname and certain numbers from the DNI simply because they are registered in the Register, it could affect yours to a greater extent

privacy expectations. It would mean disclosing information about your employment situation (at least, the interest in changing this situation) that may affect in some way your personal and work sphere, without any benefit being ascertained, due to the fact of knowing the identity of these people, regarding the exercise of workers' representation rights.

In any case, for the purposes of checking, for example, the total number of people interested in a certain vacancy, it could be sufficient to provide a numerical indication of people registered for each vacancy, without the need to identify them, including the date of application and the place applied for. This possibility would not be contrary to data protection regulations.

In conclusion, the elements examined lead to the conclusion that the right to data protection of the affected persons must yield to the public interest in knowing the information requested by the claimant, in terms of identity (name and surnames and certain figures of the ID number) of the workers included in the list of requests for voluntary mobility who have obtained a vacancy. This, unless in some case the communication of the information may reveal information protected by article 23 LTC.

As for the rest of the people registered in the register, who have not obtained a vacancy, it does not seem justified that their identity should be known, so the information should be given without including first and last name or any number of the ID number.

conclusion

The data protection regulations do not prevent access by the person making the claim to the identity (name and surname and numbers 4 to 7 of the DNI number) of the workers included in the list of requests for voluntary mobility who have obtained a job under the mobility mechanism provided for in Resolution TSF/993/2016, identifying the date of the application and the position obtained. This, unless in some case the communication of the information may reveal information protected by article 23 LTC.

The claimant's access to the identity of the other people registered in the mobility register and who have not obtained a new job under this mobility mechanism is not justified.

Barcelona, July 12, 2021