

IAI 42/2021

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 information on certain complementary remunerations, compensations and allowances of the professionals of a Territorial Management, received in the years 2019, 2020 and 2021.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the Claim submitted by a representative of the workers against an organization for the denial of the 'access to information on certain complementary remunerations, compensations and allowances for the professionals of a Territorial Management, received in the years 2019, 2020 and 2021.

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 March 31, 2021, a citizen who claims to be a representative of the workers, submits a letter to the organization, in which he requests the following information:

"From each of the (territorial management) professionals in the years 2019, 2020 and 2021:

- > the 4th, 5th, 6th and 7th digits of the NIF --> First and last name --
- > Professional category in which the professional provides services.
- > Position occupied (if one is occupied).
- > The following complementary remunerations received: ----> Overtime allowances ----> Continued care for complementary days ----> Continued care for extraordinary services --> Indemnities received --> Allowances received."

2. It is in the file a copy of the Resolution, of May 28, 2021, of the organization, addressed to the applicant, which argues that: "(...) there are no reasons of public interest sufficient to give access to information on the complementary remuneration received by the staff to the detriment of the protection of their personal data (...), therefore the Resolution dismisses the request for access to public information requested by claiming

3. On May 29, 2021, the applicant submits a claim to the GAIP, in which he states that he has requested information from each of the professionals of the Territorial Management (GT), corresponding to the years 2019, 2020 and 2021, and indicates that access to the information has been denied.

The claimant agrees that he bases his claim on article 25 of Decree 8/2021, of February 9, on transparency and the right of access to public information.

4. On May 31, 2021, the claimant sends a letter to the GAIP, in which he supplements the motivation for his claim, which he would not have included initially. In summary, the claimant considers that the information requested is public information for the purposes of transparency legislation, and bases the request for retributive information on various applicable regulations.

5. On June 2, 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 14, 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 July 1, 2021, the GAIP sends this Authority additional information from the file, specifically, the body's report dated June 21, 2021, issued at the request of the GAIP, and the electronic notification to the claimant of the Resolution of May 28, 2021.

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 request a report from 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 claim is lodged against the denial of access to individualized information (since the first and last names, and numbers 4, 5, 6 and 7 of the DNI are requested), regarding remuneration that would have been received by "each of the professionals of the Territorial Management..." during the years 2019, 2020 and 2021.

Given that the requested information refers to all GT professionals, we remind you that, according to article 19 of Law 8/2007, of July 30, of the ICS:

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

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

In any case, the data of ICS workers, whether statutory, labor, official or temporary, that identify them or that allow their identification, as well as those data that may refer more specifically to the workplace they occupy, but which are associated or linked to a specific worker and therefore identify him, are personal data and are protected by the principles and guarantees of the data protection regulations.

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).

There can be no doubt regarding the fact that the information relating to the professional category or position of the workers of the GT, as well as that relating to the complementary remunerations, per diems and compensations they may receive, is "public information" for the purposes of the article 2.b) of the LTC, subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 et seq. LTC).

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

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."

In the letter submitted by the claimant to the GAIP on May 31, 2021, he links his request for remuneration information to his "functions and legitimate interest as a representative of the workers", so that it will be necessary to take into account first of all the provisions that may affect in the event that the claimant is considered to be a representative of the workers.

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

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

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

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

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

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

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

The aforementioned regulations would allow, for example, to provide the representative of the workers who requests the information, the aggregate amounts that the different professional groups affected (all those who work in the GT, according to the terms of the claim), but it does not seem possible to communicate the information with the degree of detail and link with affected persons that the claimant requests to know, based on the specific regulations cited.

At this point, it is necessary to highlight the STS of February 9, 2021, relating to the communication to trade union delegates and workers' representatives of their personal data, based on the regulatory framework that regulates the right to information of these representatives, to which both the Resolution of May 28 and the report of June 21 of the body refer.

According to the fifth FJ of the said STS of February 9, 2021: "(...), 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 Freedom Trade union, which invokes the appellant, in addition to the general article 64 of the Statute of the Workers, 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 workers' interests."

According to the sixth FJ of the same STS:

"(...). 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.”

Taking into account the aforementioned STS, the provisions of the specific regime applicable to the right of access to information of the workers' representatives in the applicable regulations, and that the claimant requests the information "for the functions and legitimate interest as a representative of the workers" without more concreteness regarding the need or relevance to access the individualized information of all the workers affected, it does not seem that based on this regulation the representative of the workers must access the requested information, with the requested concreteness and with direct identification of all affected workers, in the terms of the claim.

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

In this sense, to analyze the possibility of communicating the individualized information of the workers of the GT, in the terms requested by the claimant, it will be necessary to take into account the provisions of the transparency legislation.

IV

As has been said, 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 article 19 of the LTC.

Given that the claimant is requesting employment and remuneration information for all GT workers, with direct identification of those affected, we will have to adhere to what derives from the limit consisting of the right to the protection of personal data contained in the articles 23 and 24 of the LTC.

Data referring to the category or position held by a worker, or information on supplementary remuneration, or on compensation or per diems received by workers, the subject of the access request, would not, in principle, be particularly protected data in the terms established by article 23 LTC, so that the criteria of article 24.2 of the LTC will have to be taken into account, according to which:

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

a) The elapsed time.

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

One of the objectives of the transparency legislation (art. 1.2 LTC) is that Public Administrations must be accountable to citizens, in relation, among other issues, to the management and destination that they give to public funds, such as those that are allocated to the remuneration received by public sector workers, of which the organization is a part. Thus, the transparency legislation provides citizens with the ability to control public funds, in short, to monitor the use of public money, as set out in the Preamble of the LTC.

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

This may be a relevant issue to take into account for the purposes of the weighting (art. 24.2 LTC), since the applicable regulations (TRLEBEP, ET and Estatut marco) recognize the exercise of the functions of representation in the corresponding representative bodies of the workers.

In any case, access to the requested information is subject to a prior, reasoned weighting between the public interest in disclosure and the rights of the affected persons, which, in this case, would be the entire workforce.

v

In this context, at the outset, the claimant requests to know the identity of each worker (name and surname, numbers 4, 5, 6 and 7 of the NIF), together with the "professional category in which he/she provides services professional, and position held (if any)".

With regard to the identification of the workers of the GT, with their professional category and position (in case they occupy one, as requested by the claimant), it is necessary to take into account the forecasts of the LTC in relation to the possibility that citizens in general can identify the people who hold jobs in the public sector.

Article 24.1 of the LTC 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 that contains personal data merely identifiers unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.”

Article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC), provides that: "For the purposes of what is provided for in article 24.1 of the Law 19/2014, of December 29, is purely identifying personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and addresses, postal and electronic, of professional contact , referred

to the staff in the service of public administrations, senior officials and managerial staff of the public sector of public administrations.”

These precepts would enable access to merely identifying data related to the organization, operation or public activity of the Administration. In this case, the information requested corresponds to the identification data of the people who are part of the GT, and in principle access should be granted unless some special circumstance requires the protection of the affected person.

Having said that, article 9.1.b) of the LTC imposes the obligation to make public on the transparency portal the identification of those responsible for the various bodies and their professional profile or career.

Beyond the forecasts of publicity for people who hold positions of certain responsibility (a possibility that, as we have already pointed out, we cannot rule out in the case examined given the RLT relating to the GT), and as this Authority has done in the future on previous occasions, article 9.1.e) of the LTC imposes the obligation to publish "The calls and the results of the selective processes of provision and professional promotion".

Thus, the LTC has the obligation to publish the identity of the people who have been selected to occupy a specific job, which would allow any citizen to identify these people and relate them to the specific position by to which they have been selected, or the position that has been assigned to them.

Remember in this sense, that the transparency legislation collects and makes extensible to all obliged subjects what is already provided for in the civil service regulations, regarding the subjection of staff selection processes to the principles of publicity and transparency, among others.

Thus, the TRLEBEP, which establishes that the selection processes of civil and labor personnel in the field of Public Administrations are subject to a series of principles, including those of publicity and transparency (article 55.2.a) ib)), or article 78 of the TRLEBEP, with regard to the provision of jobs for civil servants, article 78 of the TRLEBEP, establishes that the provision of jobs for civil servants must be provided through procedures based on the principles of equality, merit, capacity and publicity. In relation to labor personnel, we refer to the provisions of article 83 ET. Regarding the statutory staff of the ICS, remember that according to article 19.2 of the ICS Law: "2. The personnel selection and job provision processes must be based on the legislation corresponding to each type of personnel and must guarantee the principles of equality, merit, capacity, publicity and objectivity. "

For the purposes of the aforementioned weighting, it is obvious that the link of each worker to the workplace he occupies, with the details of the professional group or category, and of the position that may have been assigned to him (in the terms in which the claim is formulated) , provides employment information about this person from which information could be inferred about their qualification, approximate gross remuneration or, in the case at hand, the territorial area in which they work). Now, despite this, and given the aforementioned regulatory provisions, it must be borne in mind that these are people who hold jobs in the public sector and are subject to transparency legislation, so that their expectations of privacy must count on the possibility that any citizen can identify them as such, and know certain information about their affiliation, in this case, to the GT.

Therefore, given the aforementioned provisions of the LTC and the regulations applicable to ICS staff, it does not seem at the outset that the workers' representative can be denied access to their identity, together with their category professional and the position they hold, if applicable, unless some of the workers have a special circumstance that justifies limiting access to their information.

However, the claimant is not only seeking this information, but is also seeking access to certain supplementary pay, per diems and allowances for all WG staff, a matter to which we refer below.

VI

In the supplementary letter addressed to the GAIP on June 2, 2021, the claimant specifies that the information he requests about the supplementary remuneration "are those that result from application given the agreement in point 9.8 Specific remuneration for the day of work (plus nights, Saturdays, Sundays and holidays; Continuous care; Continuous care for extraordinary services) of the current II Agreement of the Sectorial Health Negotiating Board on the working conditions of the statutory staff of the Catalan Institute of Health ", approved by Resolution TRI/4240/2006, of November 27 (hereinafter, II Agreement). According to the II Agreement, and the information available in the document "Remuneration book 2020. Statutory staff of the ICS" (...), these supplements would basically be received by the health staff of the primary care teams, the optional staff of hierarchical services and resident staff in training.

In addition, the claimant requests to know the allowances and allowances of all GT staff.

Regarding the information requested, both the Resolution of May 28 and the report of June 21 base the denial of access to the information on the fact that "(...) the information requested from the professionals of the Management Territorial ... during the years 2019, 2020 and 2021 they do not fall into any of the categories established by the CTBG in relation to which the public interest in access to information about the specific remuneration they perceive is necessarily primary, already that they are neither management personnel of the ICS nor contingent personnel of trust, nor do they occupy positions of free appointment with a high level in the scale of official levels with which the jobs are classified, reason for which it must be concluded that we are not dealing with public employees who develop jobs with a high level of responsibility and autonomy in making decisions, nor provided with a considerable degree of discretion that justifies the existence of a special relationship of trust ance, but rather jobs with a limited level of responsibility and autonomy, (...)." (Resolution of May 28).

Now, according to the information in the "2020 Remuneration Book", cited, with reference to territorial managements, the following jobs are included: Territorial manager; Director of territorial primary care; o Director of a hospital center.

As foreseen in the RLT available on the web, the GT incorporates different groups of workers in terms of degree, qualification or level of responsibility, among others. Thus, without intending to be exhaus

the RLTC refers to the territorial manager, administrators, administrative assistants, health diplomas, doctors in different specialties, technicians, janitors, or directors and assistants to the management of EAP - both nursing and family medicine or other specialties.

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

"b) The remunerations, compensations and allowances, the activities and assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of the public bodies, societies, foundations and consortia, and the compensations that have to be perceived when ceasing to hold office."

According to article 31 of the RLTC:

"1. For the purposes of letter b) of article 11.1 of Law 19/2014, of December 29, the annual remunerations of the high positions of the public administrations and the management staff of the entities of the public sectors of these, in accordance with the remuneration tables of the current year, such as the compensations and per diems that they have effectively received."

Regarding the concept of managerial staff of public sector entities of the Government of the Generalitat, according to article 5.1 of the RLTC:

"1. For the purposes of this decree, and in accordance with the provisions of section 1.2 of the twenty-first additional provision of Law 2/2014, of January 27, on fiscal, administrative, financial and sector measures public, the persons who, on a sole or main basis, hold positions or positions expressly qualified as managers in the rules of creation or regulation are considered to be managerial personnel of the public sector entities of the Generalitat Administration of the entities, which involve the exercise of functions of special managerial or executive responsibility, understood as functions that entail direct participation in the definition and execution of public policies relating to general or strategic objectives and that externally commit the organization, and that act under the exclusive dependence of the highest governing body or exercise functions with autonomy and responsibility limited by the instructions or criteria issued by these highest bodies of government."

According to article 1 of Law 8/2007, the ICS is a "public law entity of the Generalitat, which acts subject to private law, with its own legal personality and full capacity to act for the fulfillment of its functions , (...)." According to article 3.1.b) of the LTC, this law applies, among others, to "public law entities dependent on or linked to the administrations referred to in letter a)", that is to say , Administration of the Generalitat and Local Administration.

According to article 4.2.c) of the LTC, they have the status of senior officials in the service of the public bodies referred to in article 3 LTC (among which there would be the ICS, for the purposes that concern them), "the holders or members of the governing bodies and the managerial positions of said bodies".

According to article 20 of Law 8/2007, of the ICS:

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

(...).

4. Managerial positions of the Institut Català de la Salut are the director or managing director, the directors of corporate services or those assimilated thereto, the territorial managers, the managers or directors of the hospital management unit and the managers or directors of primary care management unit or those assimilated thereto, and also the rest of the positions created by the statutes or by agreement of the Board of Directors that, in accordance with section 1, have this condition."

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

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

The positions of director and assistant director will be provided by the system of free appointment (...)."

In the case at hand, we also note that, according to article 11 of Decree 53/2006, referring to the structure of Territorial Administrations, it provides that:

11.1 The Directorate of Primary Care and the Directorate of Hospital Centres, dependent on the Territorial Management in accordance with the provisions of article 7.3 of this Decree, will have the functions indicated in the following sections.

11.2 The following will be the functions of the Primary Care Directorate:

a) The direction of the different directors of Primary Care Services in accordance with the guidelines of the person in charge of the Territorial Management. b) Supervise the assistance activity of the assigned Primary Care Services. (...).

11.3 The functions of the Hospital Center Management will

be: a) The management of the healthcare activities of the hospital or hospitals assigned to the corresponding Territorial Management. b) The direction of the rest of the management and administration bodies of the hospital or hospitals in the field of Territorial Management, in accordance with the guidelines of the person in charge of the Management. (...)."

Taking into account the provisions of this regulation, it seems clear that some of the workers who, according to the available information, would be part of the GT (territorial manager, directors and deputy directors of EAP, or directors of hospital or care centers territorial primary, to which the RLT of the GT refers, according to the information available) and which, therefore, would be included in the request for access to retributive information, could be considered managerial or high-level positions of responsibility, or they would be freely appointed positions, according to the regulatory provisions we have mentioned.

With respect to these positions (management, high level of remuneration or responsibility, or free appointment), as has been explained, there are elements that would favor the weighting in favor of access to the remuneration information requested by the claimant .

Regarding this, it should be remembered that this Authority has already supported the criterion (IAI 3/2019, IAI 33/2019, IAI 44/2019, IAI 1/2020, or IAI 1/2021), that the transparency obligations of the article 11.1.b) LTC can be extended with respect to requests for access to information that affect personnel who occupy positions of special trust or special responsibility within an organization, positions of free appointment, or that involve a high level of remuneration. This criterion should also be taken into account in relation to sites that involve a certain margin of discretion in terms of their provision.

Although the law does not expressly provide for the publication on the transparency portal of the remuneration of this type of employee, in the weighting of the rights that must be done with respect to requests for access to information, that is to say, in what we could call the "public interest test" which must determine whether access to information contributes to a better knowledge of the criteria for organization and operation and how public resources are allocated, it is considered that some of the positions to which reference has been made (territorial manager, directors of EAPs or deputy directors, directors of hospital centers or directors of territorial primary care, of the GT), would be positions that, due to their uniqueness and also due to the level remuneration that is usually associated with them, or due to the fact that they are freely appointed, the knowledge of their remuneration may be relevant for the control of the use of public resources, so the result would be the prevalence of the public interest lic in its dissemination. In these cases, it would be justified to provide information, that is to say, with regard to this staff, the aforementioned regulatory provisions would justify the delivery

Therefore, there can be no doubt that, for this type of employees and positions of managerial, trust or high degree of responsibility given the functions they perform in the GT, it is justified from the perspective of the data protection, provide individualized information for the remuneration concepts referred to by the claimant, along with their identification, level and position they hold.

VII

As for the rest of the GT workers, article 11.1 of the LTC establishes that they must be made public in the following terms:

"e) The general information on the remunerations, compensations and allowances received by public employees, grouped according to the levels and bodies."

According to article 25.2 of the RLTC: “2. The Administration of the Generalitat and its public sector entities must make public, on an aggregate, total and annual basis, with identification of first and last names, and with a monthly frequency, the remunerations, compensations and per diems actually received by the staff in public administration service referred to in article 20.2.a) of this decree.”

In line with these forecasts, this Authority has been maintaining that, in accordance with the transparency legislation (art. 11.1.e) LTC), with respect to this staff, the individualized disclosure of the remuneration received is not considered justified.

However, in the case at hand it may be relevant to obtain an individualized report of the extraordinary services (continuous care and overtime) performed by the workers of the GT, in order to properly exercise the functions of monitoring compliance with the regulations in force, specifically, those relating to the day and working hours of the staff, which as has been explained are attributed to the representatives of the workers.

It should be borne in mind that, in accordance with the II Agreement (section 9.8), the provision of services by workers on certain shifts or dates (weekends or holidays) entail an additional increase in the hourly price that the rule details. And in the assignment or authorization of the shifts and working days that give the right to receive these supplements there may be a certain degree of discretion. This discretion would have effects on the management and destination of public funds, the control and knowledge of which by the public is, as has been said, one of the objectives of the transparency legislation. Therefore, the need to make effective this control of discretion in the granting of supplements and, where appropriate, diets or compensations, and in short control of the use of public funds, is an element of weighting in favor of access to the requested information.

Thus, providing information on the complementary remuneration received (overtime, additional work and extraordinary services performed) on an individual basis, could be necessary for the purposes that the representative of the workers could control whether the forecasts established regarding the working day and schedules are being respected of staff, the procedure established for that purpose to assign shifts to workers, and to ultimately detect any irregular actions that may have occurred in relation to these assignments.

However, from the perspective of data protection, it should be noted that this purpose could also be fulfilled without the need to sacrifice the privacy of the affected workers, because an individualized relationship could be facilitated, without including the identity of the workers. It should be remembered that according to article 5.1 b) of the RGPD "the data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Therefore, in this case, the purpose of transparency can also be achieved through the pseudonymization of the information, that is to say: "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears separately and is subject to technical and organizational measures aimed at ensuring that personal data are not attributed to an identified or identifiable natural person;" (article 4.5 RGPD).

To this end, this Authority considers that the list with the supplementary remuneration requested by the claimant, the compensations and per diems received by each worker could be facilitated, replacing their first and last names with a code assigned to each of them.

However, it should be noted that in order for this to be carried out, it is necessary to deal with jobs that have a sufficiently large number of workers to prevent their re-identification.

In order for these codes to be effective from a data protection perspective, it is necessary to ensure that the identity of the worker is known only to the person who attributes the code, so that the worker is not identifiable by any other person, among others, by the representative of the workers who will receive this information. So, for example, use the no. ID or another code that could be known by third parties would not be a viable option, given that the workers' representative will have been able to access, in the terms indicated, a list with the identity and numbers of the workers' ID.

The code should remain in the communication made in this regard to the claimant, for the purposes of being able to see the remuneration received in each case, and not for any other information other than this communication, since, if it was made a general use for all actions carried out in the worker's workplace, it would be easy for the crossing of various data that could be obtained by the trade union representative, would make their identification possible and would end up having the same result as what can be identify workers with their ID number.

From all the above, it is considered that the option to provide a list with the requested remuneration information together with a numerical code in place of the identity of the workers (except for those with special responsibility that we have referred to in the previous Legal Basis) would be the most suitable, in order to find in this case the right balance between the right to the protection of personal data of the affected workers and the right of access to public information of the applicant.

conclusion

The data protection regulations do not prevent the claimant's access to the additional remuneration requested, as well as to the per diems and compensations corresponding to the personnel who occupy positions of management, of trust, of free appointment, of special responsibility, or that involve high levels of remuneration, in the terms of FJ VI of this report.

With regard to the rest of the working people of the GT, the data protection regulations would not prevent access to the list of complementary remunerations, per diems and compensations received during the requested period of time, as long as this information is provided by substituting the first and last names of the workers by a code that does not allow them to

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