

IAI 55/2021

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 partial denial of access to the statements and the answers to the tests carried out to fill a technician position that town hall.

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 the city council for the partial denial of access to the statements and the answers to the tests taken to fill a technician position in that town hall.

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. On May 21, 2021, a citizen requests from a city council information regarding the content and location of the tests to fill a senior economist technician position in the city council as well as the content of the tests carried out by two people identified by their ID numbers.**
- 2. On June 21, 2021, the city council agrees to the partial estimate of the request for access to information with the denial of access to the answers to the tests to fill the position of technician general administration of the town hall and the delivery of the statement of the tests, as well as the scoring criteria.**
- 3. On June 27, 2021, the applicant submits a claim to the GAIP against the city council in which he states:**

"I have requested the questions and answers given by some opponents in a call for career officials and I am denied the answers and the questions are not provided to me within the established legal term of 1 month."

The claimant attaches the file processed by the Grievance Ombudsman as a result of the letters of complaint submitted by him for alleged irregularities in the selection process that is the subject of the claim which would have ended with a letter from the Ombudsman to the town hall communicating the irregularity committed and asking for the adoption of appropriate measures.

- 4. On June 29, 2021, the GAIP requests the city council to issue a report on the claim submitted, identify the third parties affected by the access and send the completed file to which it refers.**

5. On July 15, the city council issues a report in relation to the claim presented, which states:

"These claims are a consequence of the partial denial of the requests that the citizen made in the corresponding rights of access with code N222/2021/000119 and 000120 respectively, in which he requested the following information:

"I would like to know the content of the two exercises, that is, the questions that have been included and also where and how (face-to-face, online???) the tests were carried out."

This part of the request has been accepted in both cases and will be delivered to you within the legally provided deadlines. It is worth noting that some of the information you request (format and location of the tests) is published on the Corporation's website, together with all the information related to the call.

"Know the content of the tests carried out by applicants with ID and this is, the answers they, gave in the 2 exercises and which determined the result."

This part of the request has not been accepted, since we understand that the delivery of the evidence of the applicants conflicts with the right to the protection of personal data of the affected persons. (...)

With regard to the delivery of the exams of the applicants, we understand that this citizen is not considered a person interested in the file given that he has not been a participant in the process. En cas que hagués estat participant i atenent als criteris tant de l'Agència Espanyola com de l'Agència Catalana de protecció de dades sí que hauria tingut dret a conèixer el contingut, però no és aquest el cas."

6. On July 21, 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 regarding access to the

public information, establishes that if the refusal is 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 case before us is caused by a request for information made by a citizen regarding the place and content of the tests of a personnel selection process carried out by the claimed city council (in which the person making the claim did not would have participated) and the specific content of the answers to the tests carried out by two candidates identified by their ID.

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

In accordance with 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 treatments of 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."

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

The evidence of the selection process to access a general administration technician position at the City Council, which are the subject of the claim, is public information in accordance with article 2.b) of the LTC, submitted to the right of access (article 18 of the LTC) which contains personal data of these applicants.

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 with the limits of articles 23 and 24 of the LTC regarding personal data.

III

According to article 23 of the LTC "Requests for access to public information must be denied if the information sought contains specially protected personal data,

such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a warning public to the infringer, unless the affected party expressly consents by means of a written document that must accompany the request."

It must be taken into account, as this Authority has previously highlighted, that in personnel selection processes there may be evidence that by their nature they may deal with special categories of applicants' data in the terms provided for in Article 23 LTC. This would be the case, for example, of physical tests or tests that involve an assessment of aspects of personality, in which case it would be necessary to preserve their confidentiality and limit access, unless the request was accompanied by the express consent of the affected persons.

In the case at hand, it does not appear that the evidence referred to in the application is of this nature, but rather that it appears to be evidence of knowledge.

With regard to public information not affected by the provisions of article 23 of the LTC, the analysis must be carried out based on the provisions of article 24 of the LTC, which provides the next:

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

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

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

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

It does not seem that in this case the information requested must include information provided for in article 24.1, given that what is requested by way of complaint are only the answers.

With regard to the rest of the personal data, the claim must be weighted in accordance with the provisions of article 24.2 of the LTC. This weighting reasoned between the public interest in the

disclosure of information and the right of the affected persons must take into account the circumstances affecting each case and, in particular, the different elements listed in the aforementioned article (purpose of access, the fact that it may affect the security of people, etc.).

As this Authority has made clear in previous reports, the fact that the person making the claim has the status of an interested party in a selective process regarding which they request information grants them a reinforced or privileged right of access compared to other possible only - applicants for information who have not participated in that selective process. In the case we are dealing with, however, according to the documentation that makes up the file, specifically the report issued by the claimed city council, the person making the request for access would not have the condition of interested in the personnel selection process for which you are requesting inform

The person making the claim specifies in the claim that the reason for requesting the information is that "the person appointed as an official illegally occupies an official position as he does not belong to group A1 and the position called for has been "ad hoc"". This is an element that can be taken into consideration in the weighting of rights as in fact provided for in article 24.2.b) LTC.

The purpose expressed by the claimant in the sense of demanding transparency in municipal action and the withholding of accounts, would coincide with the purpose of the Transparency Law included in article 1.2 of LTC which establishes that "the purpose of this law is to establish a relationship system between people and the public administration and other obliged subjects, based on knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and management administrative and the guarantee of the retention of accounts and responsibility in public management". It is in this context that it is necessary to assess whether or not access to the personal information of the participants in the selection process whose information is required would be justified and whether the purpose set forth by the claimant would be achieved with access to the information requested.

It must be taken into consideration that personnel selection procedures are based, in accordance with its regulatory regulations, on the principles of equality, merit and ability, transparency and publicity.

In this sense, the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (EBEP) (applicable as established by article 2.1.c) to official staff and, where appropriate, to the labor staff of Local Entities), establishes these principles in article 55, where it is foreseen that:

"1. All citizens have the right to access public employment in accordance with the constitutional principles of equality, merit and capacity, and in accordance with the provisions of this Statute and the rest of the legal system."

Also, Law 7/1985, of April 2, regulating the Basics of the Local Regime, provides in article 91.2 that The selection of personnel for public employment shall be carried out through the system of contest, opposition or free opposition contest in which the constitutional principles of equality, merit and capacity are guaranteed, in any case, as well as that of publicity."

For its part, the Municipal and Local Regime Law of Catalonia establishes in article 285 that "local corporations must publicly formulate their employment offers".

Decree 214/1990, of 30 July, which approves the staff regulations in the service of local entities, regulates the staff selection procedure, under the principle of publicity (article 94).

The provisions of the aforementioned regulations would constitute an element in favor of access by the claimant to that information necessary to verify that the selection procedure on which the query is concerned has been processed with full respect for the guiding principles of this type of procedure .

In addition, from the point of view of active advertising, article 9.1.e) of the LTC establishes that they must be published (on the transparency portal or the corresponding electronic headquarters) "The calls and the results of the selective processes of staff provision and promotion". This article has been developed by article 21 of Decree 8/2021, of February 9, on transparency and the right of access to public information, which establishes:

"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.

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."

These forecasts also constitute an element favorable to access to that information that can be claimed by the applicant and that has already been the subject of active advertising.

Consequently, from the point of view of data protection regulations, there would be no problem in providing the claimant with information on what tests have been carried out, the site

where they were carried out and the people admitted to each test or exercise of the process and the person finally selected identified with their first and last name and four numbers of their DNI or equivalent document

The claimant requests, however, expressly that the City Council provide him with the tests carried out by two candidates that he identifies with his ID (it is unknown if one of these is the candidate finally selected).

It is worth saying that for the purposes of transparency, it could be relevant to know the score obtained by the candidate finally selected in the various tests that he has taken and that would justify him being the person finally selected.

However, it does not seem that access to the specific content of the tests carried out by the applicants (whether the candidates are finally selected or not) can be justified, given that it may cause harm to the people affected who would have participated in a selection procedure, with expectations of privacy regarding the content of their tests (delimited by the regulations governing the call which, in the case of being selected, could lead to access to its content by other participants in the process, but not by any citizen without a direct interest in the procedure), constitutes an unfavorable element to the communication of information.

Therefore, the weighting of rights judgment in the case at hand would prevail over the right to data protection of applicants to the selection process in respect of whom the information is requested over the right of access to the information of the person claiming

Finally, it should be taken into consideration that article 70.5 of the RLTC establishes that in cases where, in application of the reasoned weighting of article 24.2 of the LTC, access to public information containing personal data is denied, the public administrations, in application of the principles of proportionality and partial access, must give access to the rest of the information, prior to anonymization or pseudonymization of this data, when possible.

According to article 4.5 of the RGPD, pseudonymization means "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".

The aforementioned article 70.5 includes in its statement the concept of pseudonymization in the same terms as the RGPD. With regard to anonymization, the RLTC defines it as: "the elimination of the personal data of the natural persons affected contained in the information and any other information that may allow them to be identified directly or indirectly without disproportionate efforts, without impairment of being able to maintain, where appropriate, the merely identifying data of the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act".

In the case at hand, it does not seem that the anonymization or pseudonymization of the requested information can constitute an effective means of guaranteeing the rights of the persons affected, given that it cannot be guaranteed that the re-identification of the persons concerned will not occur having into

context (a call with a small number of participants, and only two candidates whose information is requested).

Conclusions

In accordance with data protection regulations, access to the information subject to the claim, consisting of the content of the tests carried out by two candidates, identified by their ID, in a personnel selection procedure, must be denied.

Barcelona, September 2, 2021

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