

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 against a city council for the denial of access to information on the workforce, procedures and performance statistics of the Local police

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 by a citizen against a City Council for the denial of access to information on the staff, procedures and performance statistics of the Local Police.

Having analyzed 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, I issue the following report:

Background

1. On September 3, 2021, a citizen addresses a letter to a City Council in the following terms:

"Dear Mayoress, With a view to improving the effectiveness and efficiency of local agents in the fulfillment of your duties as an administrative police and as the highest responsible for it, I would like to ask you for this public information that I did not find on the municipal transparency portal:

1.- Personnel:

- 1.1.- List of agents with photograph, identification number and assigned shift.
- 1.2.- Name of the union representatives and representatives, if any.
- 1.3.- List of agents on leave with date of medical certificate and expected date of return to service if any.
- 1.4.- Public salaries, broken down by service complements, destination, night time etc.
- 1.5.- Weapons licenses and certificate of annual shooting practices at an approved facility for the last four years.
- 1.6.- Collective agreement if it is different from the 2010 one published on the transparency website.

2.- Protocols:

- 2.1.- Electronic collection and storage protocol in the software for managing citizen calls with notices and complaints.
- 2.2.- Number of calls received and recorded (NB! Their figures may be different) during the last two years.
- 2.3.- Coordination protocol with the municipal crane service.
- 2.4.- Action protocol for the van with the alcohol level control equipment.
- 2.5.- Coordination and collaboration agreement in matters of public security with the Department of the Interior, if any.

3.- Recent actions: 3.1.-

Number of acts of service in the last two years broken down into these five categories: complaints for occupations, road control and blood alcohol level, administrative police of municipal ordinances, COVID-19 controls and others

3.2.- Number of vehicles abandoned and removed in the municipality by the municipal crane broken down into three categories: improper parking, notice of abandonment by neighbors and abandonment detected/ reported ex officio by the agents themselves."

2. On October 7, 2021, this same citizen, faced with the lack of response to his request, files a claim with the GAIP against the City Council for denying access to the requested public information.

3. On October 13, 2021, the GAIP sent the claim to the City Council, requesting the issuance of a report on which to base their positions, as well as the complete file relating to the request for access to public information and the identification of the third parties affected by the requested access.

4. On October 16, 2021, the City Council sends the requested file to the GAIP, together with the Secretary's report.

In this report it is noted that, given the complexity in the analysis and delivery of the requested information, on October 5, 2021 the City Council requested this Authority to issue an opinion on respect, which, at the date of issue of the report, they still do not have. This motivates that the request for public information submitted has not been resolved.

5. On October 29, 2021, the director of the Catalan Data Protection Authority issues opinion CNS 46/2021 in relation to the City Council's consultation on access to various public information related to the organization and operation of the Local Police Prefecture, notifying the City Council on the same day.

6. On November 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.

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 the LTC, which regulates the complaint against resolutions regarding access to public information, establishes that if the refusal is based on the protection of personal data, the Commission must request 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 (article 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 repeals Directive 95/46/EC (General Data Protection Regulation, hereafter RGPD).

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 the LTC.

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

This claim is filed against the denial of access to various public information related to the staff, procedures and performance statistics of the Local Police.

As has been made clear in the background of this report, this Authority, at the request of the City Council, issued on October 29, 2021 the opinion CNS 46/2021 on access to various public information related to the organization and operation of the Local Police Prefecture.

It has been established that the request for public information that motivated the request for an opinion by the City Council to this Authority coincides with the request that is the subject of this claim before the GAIP. For this reason, the considerations made in the said opinion are reproduced below, which are fully applicable to the case examined.

"(...)

The request for access to public information, a copy of which is attached, is formulated in the following terms:

"Dear Mayor, With a view to improving the effectiveness and efficiency of local agents in the performance of their duties as administrative police and as

you are in charge, I would like to ask you for this public information that I have not found on the municipal transparency portal:

1.- Personnel:

- 1.1.- List of agents with photograph, identification number and assigned shift.
- 1.2.- Name of the union representatives and representatives, if any.
- 1.3.- List of agents on leave with date of medical certificate and expected date of return to service if any.
- 1.4.- Public salaries, broken down by service complements, destination, night time etc.
- 1.5.- Weapons licenses and certificate of annual shooting practices at an approved facility for the last four years.
- 1.6.- Collective agreement if it is different from the 2010 one published on the transparency website.

2.- Protocols:

- 2.1.- Electronic collection and storage protocol in the software for managing citizen calls with notices and complaints.
- 2.2.- Number of calls received and recorded (NB! Their figures may be different) during the last two years.
- 2.3.- Coordination protocol with the municipal crane service.
- 2.4.- Action protocol for the van with the alcohol level control equipment.
- 2.5.- Coordination and collaboration agreement in matters of public security with the Department of the Interior, if any.

3.- Recent actions: 3.1.-

Number of acts of service in the last two years broken down into these five categories: complaints for occupations, road control and blood alcohol level, administrative police of municipal ordinances, COVID-19 controls and others

3.2.- Number of vehicles abandoned and removed in the municipality by the municipal crane broken down into three categories: improper parking, notice of abandonment by neighbors and abandonment detected/reported ex officio by the agents themselves."

At the outset, agree that, from the point of view of data protection, there would be no inconvenience in facilitating access or giving the citizen the information or documentation he requests that does not contain personal data, such as the information referred to in **points 1.6, 2.1, 2.3 and 2.4** of your request.

Nor would there be any inconvenience in handing over the information mentioned in **points 2.2, 3.1 and 3.2** of the request in consideration of the terms in which it is requested (number of calls received and recorded, and number of police actions, respectively), given that it would in any case be aggregated information and that, therefore, it would not include personal data.

In these cases, when the requested public information does not contain personal data, in the terms of article 4.1) of Regulation 2016/679, of April 27, 2016, relating to the protection of natural persons by regarding data processing

personal data and the free circulation of this data and which repeals Directive 95/46/CE (RGPD), the data protection regulations would not apply.

Regarding the rest of the public information requested that contains personal data, its delivery to the citizen, in accordance with article 4.2) of the RGPD, will constitute data processing, which must be adjusted to the principles and obligations established in data protection legislation.

III

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides 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".

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

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

Article 18 of the LTC recognizes the right of people 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 entity" (section 1).

Article 2.b) of the 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 obliged subjects in accordance with the provisions of this law".

For its part, article 53.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), specifies that it is public information subject to the right of access "all the information, any data or documents that the public administrations have prepared, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."

Therefore, the citizen has the right to access the information held by the City Council on the organization and operation of the Local Police Prefecture. However, this right of access is not absolute and may be denied or restricted for the reasons expressly established in the laws.

Specifically, and with regard to the right to the protection of personal data, the criteria established in articles 23 and 24 of the LTC, and in article 15 of Law 19/2013, of 9 of December, on transparency, access to public information and good governance (LT)), as well as the principles of the personal data protection regulations.

IV

Article 23 of the LTC states that "requests for access to public information must be denied if the information sought contains particularly 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 public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request."

In similar terms, article 15.1 of the LT, in its wording given by the eleventh final provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) , has the following:

"1. If the requested information contains personal data that reveal the ideology, trade union affiliation, religion or beliefs, access can only be authorized if there is the express and written consent of the affected person, unless said affected person had made it manifestly public the data before access was requested.

If the information includes personal data that refers to racial origin, health or sex life, includes genetic or biometric data or contains data related to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, access only it may be authorized if the express consent of the affected person is counted or if the latter is covered by a rule with the force of law."

Regarding requests for access to public information that does not contain data deserving of special protection, article 24 of the LTC provides the following:

"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. (...)."

Given this, the applicant's access to that public information detailed in his application that contains personal data is analyzed separately below.

v

The applicant first asks for a "list of agents with photograph, identification number and assigned shift" (point 1.1 of the application).

Article 24.1 of the LTC, previously transcribed, allows access to the merely identifying data of public employees who intervene due to their functions in the different procedures or public actions carried out by the Administration, unless specific circumstances arise that justify the prevalence of the right to data protection of the person or persons affected.

In this sense, article 70.2 of the RLTC specifies what is meant by merely identifying personal data in the following terms:

"For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, 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, referring to staff in the service of public administrations, senior positions and managerial staff in the public sector of public administrations.

In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature.

If the signature is electronic, the electronically signed document must be published in such a way that the properties of the electronic certificate used for the signature cannot be accessed.

The location data must be deleted in the event that it is not merely identifying data of the author in his position of position or staff in the service of public administrations."

Therefore, facilitating the citizen's access to the merely identifying data relating to the first and last names of public employees that may appear in the requested information, in principle would not be contrary to the right to the protection of personal data.

However, it must be borne in mind that the sectoral regulations applicable to security bodies and forces (Organic Law 2/1986, of March 13, on Security Forces and Forces; Law 4/2003, of April 7, of organizing the public security system of Catalonia; and Law 16/1991, of July 10, on local police forces) establishes that the exercise of the right of citizens to know the identity and affiliation of police officials - as a mechanism

of guarantee and defense of their rights against any irregular action of the same must be combined with the maintenance of a certain degree of reserve, which is articulated through the use of identification numbers necessary to preserve their own security and that of the function they perform.

Thus, Article 25 ter of Law 4/2003 provides that "all members of local police forces must carry a professional accreditation document. (...). This document must include, at least, the municipality of affiliation, the identification of the professional category and the individual registration number. (...)."

In this sense, article 70.3 of the RLTC has provided that "in the case of members of the forces and security forces (...), their identification with names and surnames must be replaced by the publication of a code or professional identification number."

In view of these forecasts, and also taking into account the publicity required by the civil service regulations regarding the appointments and the resolutions of job provision procedures, the citizen's access to the identification of the members could be admitted of the Local Police through their professional identification number (TIP). Not so, but to this information associated with his photograph, since this identifying data exceeds the merely identifying information of public employees which, in accordance with the aforementioned articles, can be given via right of access (article 24.1 LTC and 70 RLTC).

Regarding the access to the photograph of the agents, as well as the assigned shift, this would require a reasoned weighting between the public interest in the disclosure of the information and the rights of the affected persons, as provided by the article 24.2 of the LTC.

For these purposes, it is necessary to take into account the weighting elements mentioned in the same article, as well as the concurrence of any other circumstance that may be relevant in the specific case.

At this point, it should be noted that, although the exercise of the right of access is not conditioned on the concurrence of a personal interest nor is it subject to motivation (article 18.2 LTC), the fact that the requesting person expresses which is the purpose pursued or a motivation that justifies the interest to be satisfied by obtaining the requested information may be a relevant element to take into account as a weighting criterion.

In the present case, the citizen states in his request that "with a view to improving the effectiveness and efficiency of local agents in fulfilling their duties as administrative police (...), I would like to ask you this public information that I have not found on the municipal transparency portal (...)".

In view of these terms, the requested access should in any case be understood as framed within the purpose of the transparency law itself, which, in accordance with its article 1.2, is "to establish a system of relationship between the people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and responsibility in public management."

The control of the actions of the City Council in the different areas of municipal activity, including those of the Local Police, is one of the objectives that is intended with transparency (this is clear from the statement of reasons of the LTC) . In this sense, it can be relevant to know the way in which the Local Police is organized, as well as whether the municipality has sufficient cash.

However, it must be borne in mind that providing the agents with their photograph together with their TIP or knowing the shift they have been assigned on an individual basis could significantly affect their professional and personal safety (Article 24.2.d LTC), until and all on occasion, it could allow to establish patterns of behavior.

Taking into account the legislator's interest in preserving the identity of the people who make up the security forces and bodies, and given that there is no evidence of the concurrence of any qualified circumstance in the person requesting that can justify a different treatment with regard to the possibility of accessing this information with respect to that of any citizen (for example, being a councilor in this City Council or representative of the workers), would not be justified, for purposes of transparency and control of the management carried out by the City Council in this area of municipal action, the citizen's access to said information.

This aim could also be achieved without sacrificing the privacy of the affected persons by providing aggregated information on the organization of personal means, which would include, for example, a ratio of the number of cash allocated to each shift, unless there is some other limit other than the protection of personal data that prevents it (for example, for reasons of public safety).

VI

The applicant also asks for "the name of the union representatives and representatives, if any" (point 1.2 of the application).

The LTC establishes the obligation to publish on the transparency portal, within the information relating to the institutional organization and the administrative structure, "the number of freed trade unions that exist in the field of the Administration and the entities that depend on it, with the indication of the corresponding unions, the costs that the releases generate for the Administration and the number of union hours used" (article 9.2).

Article 24 of the RLTC specifies that:

- "1. For the purposes of article 9.2 of Law 19/2014, of December 29, the number of workers exempted from union must be published in each public administration, with an indication of the reason for the dispensation of assistance at the workplace and the union organization to which it corresponds.
2. Staff in the service of public administrations who have had, at least, one hour of union hourly credit during the last year, part-time, full-time exemption due to accumulation, are considered union exempt union hours, or full-time release by granting an institutional union license.

3. It must also be published the total sum of hours of union hourly credit that the union organizations have had during the last year in a disaggregated form, with distinction from those that correspond to unitary, union representation or specific agreements of collective bargaining and those corresponding to full-time, half-time or individual hours, such as the total and aggregate cost they generate for the public administration, which is determined from the remuneration received by each union employee with union credit."

It is, in any case, aggregated information, to which anyone must be able to have access and, therefore, there would be no problem in providing it, under the same terms, through the right of access.

However, in this case it should be taken into account that the citizen expressly indicates that he wants the identification (name) of these people, which goes beyond the information subject to active advertising.

In the event that the City Council has union members in its organization, it should be noted that identifying them with their first and last names would make it possible to know their status as union members and, given the information that must be the subject of active publicity (article 9.2 LTC and 24 RLTC), could even make it possible to find out without disproportionate efforts to which union these people are affiliated. Therefore, in any case, it would be data considered particularly protected.

As we have seen, the applicable legislation only allows access to information that contains data relating to trade union membership with the express and written consent of the affected person (article 23 LTC), unless the latter has made it manifestly public the data prior to the access request (article 15.1 LT).

At this point, it should be noted that the Authority has previously had the opportunity to examine the possibility of accessing this type of data by employees of the claimed administration itself, in report IAI 43/2019 (available on the website <https://apdcat.gencat.cat/ca/inici>).

In that case, it was concluded that the right to data protection would not prevent the applicant, who was an employee of the same claimed administration, from being given the information about the names and surnames of the union representatives who are representatives of the workers, in to the extent that it could be understood that these people would have already disclosed their trade union affiliation previously following the corresponding electoral procedures and given that this would be relevant information to guarantee transparency and control over the application of trade union agreements by the rest of workers. However, these considerations would not be applicable to the case at hand.

According to the information available, in the present case the person requesting access would not be part of the City Council's staff nor does it appear that there is any other circumstance in his person that, as has said, can if necessary justify a differentiated treatment with regard to the possibility of accessing this information compared to that of any citizen.

Outside the work environment, it does not seem that it can be admitted that the exception of article 15.1 of the LT applies, that is, those affected have clearly made their data public. Therefore, in this case, access to the identification of these people will have to be limited, unless the citizen provides the express and written consent of those affected.

In relation to this consent, note that article 70.1 of the RLTC provides that "it is up to the person requesting to provide the express written consent of the persons holding the personal data affected by the requested access. The public administrations can transfer the request and the consent to the person holding the data in order to certify the written consent provided, in case of doubt about its veracity.

VII

The applicant also requests a "list of discharged agents with date of medical certificate and expected date of return to service if any" (point 1.3 of the application).

It should be borne in mind that this information, to the extent that those affected are identified or identifiable, would affect data relating to the health of the agents who have caused medical leave (article 4.15) RGPD), therefore, data deserving of special protection (article 9 RGPD). For this reason, it would be necessary to limit the citizen's access, unless they have their express consent or with the concurrence of some other of the enabling circumstances provided for in article 23.1 of the TLC or article 15.1 of the LT, of which there is no record.

However, there would be no disadvantage, from the perspective of data protection, and unless there is some other limit that prevents it (for example, public safety), to give the citizen information about the number of agents in situation of temporary incapacity, without including, however, the date of return or any data that allows direct or indirect identification.

VIII

The applicant also asks to know "public salaries, broken down by additional service, destination, night time, etc." (point 1.4 of the application), a request that, in view of the terms of his application, should be understood referring to members of the Local Police.

According to the information published in the headquarters of transparency, the staff of the Local Police of the municipality is made up of a sub-inspector and a sergeant, who correspond to the staff of the intermediate scale, and three corporals and seventeen officers, who correspond to the basic scale, in accordance with what is established in article 24.1 of Law 16/1991.

On the municipal website it is pointed out that the Deputy Chief Inspector of the Prefecture is the "technical manager of the Local Police". Taking into account that the command of the Local Police would fall to this position of sub-inspector, it would not seem that there would be any inconvenience in giving the citizen the remunerative information regarding this job, which should include the full amount for any remunerative concept, compensation or diet (article 11.1.b) LTC).

In view of the information requested, the objective intended in this specific case with the access would be framed in the control of the management of public resources in terms of personnel by the City Council.

It should be borne in mind that the transparency legislation obliges public administrations to publish the remuneration of public employees in two different ways: one, through the individualized publication of "remunerations, compensations and allowances, activities and assets, remunerations, compensations and diets, the activities and assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of public bodies, societies, foundations and consortia, and the indemnities that they must stop receiving when they stop "exercising the position" (article 11.1.b) LTC); the other, through the publication of "the general information on the remunerations, compensations and allowances received by public employees, grouped according to the levels and bodies" (article 11.1.e) LTC).

Article 25 of the RLTC specifies what is to be understood by remuneration, compensation and per diems for the purposes of article 11.1.e) of the LTC. And article 31 of the RLTC which remuneration information must be made public for the purposes of article 11.1.b) of the LTC.

It is a criterion supported by this Authority regarding access to the remuneration information of public employees in previous reports and opinions issued on this issue (among others, IAI 34/2021, IAI 1/2021, CNS 58/2019 or IAI 3 /2019) that the provisions of article 11.1.b) of the LTC (individualized publication of remuneration, compensation and per diems of senior officials) can be extended with respect to requests for access to staff information that holds positions of special trust, of special responsibility within the organization or of a high level in the entity's hierarchy, of free appointment or that entail a high level of remuneration.

Although in these cases the LTC does not provide for the publication of their remuneration, with regard to requests for access to this information, it is taken into account that these are positions that, due to their uniqueness and also due to the level of remuneration usually associated with them, the knowledge of their remuneration can be relevant for the control of the use of public resources. Therefore, in these cases, it would be justified to provide individualized remuneration information about these positions, even identifying the people affected.

Transferred to the case at hand, this could be the assumption of the head of the Local Police force, who, under the command of the mayor or the person to whom he delegates, exercises the immediate command of the force (article 26.1 Law 16/1991).

It should be borne in mind that the head of the Local Police, in accordance with article 27 of Law 16/1991, has the following functions: "a) Direct, coordinate and supervise the operations of the body, and also the activities administrative, to ensure its effectiveness; b) Assess the needs of human and material resources and formulate the relevant proposals; c) Transform into concrete orders the guidelines for the objectives to be achieved, received from the mayor or the office to which he delegates; d) Inform the mayor, or the position in which he delegates, of the operation of the service; e) Fulfill any other function attributed to him by the body's municipal regulations" and, therefore, his situation would be comparable to that of managerial positions (considered senior positions for the purposes of article 4.1.b) and 11.1.b) of the LTC).

With regard to the rest of the workers, this Authority has maintained that the evaluation of the use of public resources can be done by having the information on remuneration in an aggregated manner, that is to say, associated with the workplaces of the Public administration in question grouped according to the levels and the bodies to which they belong, without having to indicate the identity of the specific person who occupies a certain job.

It must be taken into account that the disclosure of the income of a natural person facilitates the obtaining of an economic profile of the affected person which may end up causing him harm, both in the professional field and in front of institutions financial, social, etc. For this reason, it does not seem justified to give generalized access to the remuneration received by each specific worker, beyond the possibility of providing information on remuneration grouped by category or according to the different types of jobs, given that these alternatives allow an evaluation of the use of public resources without unnecessarily sacrificing the right to data protection of the affected persons.

For this reason, with regard to the rest of the Local Police staff, taking into account the impact that handing over information on an individual basis can cause for these people and the lack of a specific reason that could justify access to these terms, the remuneration information of these workers should be provided to the citizen in an aggregated manner, as it is sufficient to achieve the intended control of public expenditure in remuneration matters.

IX

The applicant also requests information on "weapons licenses and certificate of annual shooting practice at an approved facility for the last four years" (point 1.5 of the application). Given that the request is framed in the "personal" section, it cannot be ruled out that it intends to access this information regarding each member of the Local Police.

In accordance with Decree 219/1996, of June 12, which approves the Armament Regulations of the local police, this type of information on the possession of weapons and shooting practices is part of the file of weapons of the members of the Local Police.

Article 11 of the Decree states that:

"The town councils will open to each of the members of the local police a file containing all the data relating to the conservation, possession and use of the weapons and ammunition that they are legally equipped with, and any other data of interest related to the possession and use of the firearm.
Periodic reviews, practices or training courses completed will also be included."

For its part, article 27 of Decree 219/1996 establishes that:

"27.1 The results of the psychotechnical and medical reviews and the police marksmanship training practices will be incorporated into the personal file referred to in article 11 of this Decree.

27.2 The reports and contents of the psychotechnical and medical tests that justify the pass or fail result will be under the exclusive custody of the technicians who carry them out."

Delivering the information on the weapons license linked to the police officer in question would facilitate knowledge on the part of the requesting person not only of his identity but also of the identification and characteristics of the assigned weapon to this worker. It could also reveal other additional information such as whether the officer has a second weapon, or even if it was reported in relation to any particular officer who does not have his gun license, information deserving of special protection, taking into account the cases that may give rise to this situation in accordance with article 16 of Decree 219/1996, linked to detected physical or mental deficiencies or the commission of administrative offenses or crimes, among others.

Taking into account the purpose of transparency intended with the request, and the non-concurrence of any qualified circumstance in the applicant, it is not sufficiently justified what relevance for the control of the City Council in this area of municipal action can have of this type of information so that the affected people are identified.

The achievement of this objective could also be achieved without sacrificing the right to data protection of those affected by providing the citizen with information on the number of weapons licenses available to the Corporation in the last four years, it could even be made available aggregated by year, in such a way that it could know the variations (increase or decrease) in endowments. That is, unless there is some other limit that prevents it (for example, public safety).

The same can be said regarding the information on police marksmanship training practices, should it be requested linked to each police officer.

For the purposes of monitoring the municipal performance in the management of its human resources, it could be relevant to know whether all members of the Local Police have carried out the relevant practices in the last four years, as required by the applicable legislation (in accordance with article 25 of Decree 219/1996 must be done at least twice a year).

Now, in order to achieve this control, which must be addressed to the administration and not to the workers, it would not be necessary to know the identity of the people affected. In addition, taking into account that those agents who have the weapon withdrawn are not obliged to carry out the practices and given the reasons for which the weapon can be withdrawn (article 16 Decree 219/1996), deliver the aforementioned information linked to the worker could also reveal in this case data deserving of special protection relating to his person. Therefore, the citizen's access to this type of information should be limited.

There would be no problem with all of this, from the point of view of data protection regulations, and it seems that it would be more in line with the terms of their request, by giving the citizen a certificate in which state the members of the Local Police who

have carried out the relevant police marksmanship practice during the last four years, without including any data that allows their identification.

In relation to this certificate, article 24.1 of the LTC allows access to the merely identifying data of public employees who intervene by reason of their functions in the different procedures or public actions carried out by the Administration, unless they concur specific circumstances that justify the prevalence of the right to data protection of the affected person.

Therefore, in the absence of the allegations that could be formulated by the person issuing the certificate - to whom the request should be forwarded in accordance with articles 31 and 42 of the LTC -, it would be necessary to recognize the right of the person requesting to access the merely identifying data indicated in article 70.2 of the RLTC about that person. However, if he was a member of the Local Police, his identification should be carried out through his TIP instead of his first and last name (article 70.3 RLTC).

X

The applicant also requests the "coordination and collaboration agreement in matters of public security (of the City Council) with the interior department" (point 2.5 of the application).

This public information will contain the identification data of the persons who act on behalf of the signatory parties, therefore, under the protection of article 24.1 of the LTC and provided that there are no specific circumstances that justify the prevalence of right to data protection of the affected persons, the personal data protection regulations would not prevent access to the merely identifying data of these persons (Article 70.2 RLTC) and, consequently, to the aforementioned agreement."

In accordance with the considerations made in the opinion CNS 46/2021, transcribed, regarding the present claim the following are made,

Conclusions

The data protection regulations do not prevent the claimant's access to that requested public information that does not contain personal data, specifically, that specified in points 1.6, 2.1, 2.2, 2.3, 2.4, 3.1 and 3.2 of your request.

With regard to access to a list of agents with photograph, identification number and assigned shift, it would only be justified to give them the professional identification number assigned to them.

Access to the names of union workers and a list of agents on medical leave would require the express written consent of those affected. However, information could be provided on the number of agents in a situation of temporary incapacity, without including the date of return or any data that allows their direct or indirect identification.

The claimant has the right to access the remuneration received by the Deputy Chief Inspector of the Local Police, under the terms of article 11.1.b) of the LTC. As for the rest of the members of the Local Police, the remuneration should be paid in aggregate.

With regard to the requested information on gun licenses and shooting practices for the last four years, you could be given information on the number of gun licenses held by the City Council and a certificate stating that the members of the Local Police have carried out, during the last four years, the practice of perfecting police marksmanship.

The person making the claim has the right to access the merely identifying data of public employees that may be included in the coordination and collaboration agreement in matters of public security that they are requesting.

Barcelona, November 10, 2021

Machine Translated