

IAI 81/2021

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 of a City Council, for the denial of access to information on the remuneration of City Council staff

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 representative of the workers against the City Council, for the refusal of access to information on remuneration of City Council staff.

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 July 27, 2021, a citizen who states that he is a delegate of the City Council's official staff, submits a letter to the City Council, in which he requests to know:

"- List of all the annual remuneration for each of the positions, identifying each position but not the people who occupy them (both labor and civil servants) of the City Council (...). Excluding the remuneration of the Triennis.

- List of all the remunerations of the positions of trust and eventual staff of the City Council (...), with identification of the person, to be able to have a greater understanding on the part of the social part of the city council of the organization administrative of this and the use of public funds."

2. It is stated in the file that, on September 16, 2021, the representative of the workers reiterates his request for information to the City Council, given the lack of response from the latter to the request of July 27.

3. On November 8, 2021, the applicant submits a complaint to the GAIP, in which he states that he has not received any response from the City Council, in relation to the request for access to information of 27 of July 2021, reiterated on September 16, 2021.

4. On November 9, 2021, the GAIP requests the person making the claim to prove their status as a delegate of the City Council's civil servants, in accordance with which they claim to act in the context of the claim. On November 10, 2021, the claimant provides the GAIP with a copy of the City Council secretary's certificate, attesting to the status of representative of the City Council's official staff.

5. On November 15, 2021, the GAIP communicates to the City Council 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 November 29, 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 December 13, the GAIP sent this Authority a copy of the City Council's report in relation to the request for access to information.

Legal Foundations

I

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

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

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

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

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

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

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

II

The claim to the GAIP is lodged against the denial of access, by a person representing the civil service staff, to the remuneration information of the City Council staff, specifically, the "list of all the annual remunerations of each of the places, identifying each place but not the people who occupy them (both labor and civil servants) of the City Council (...). Excluding the remuneration of the Triennis", as well as the "list of all the remuneration of the positions of trust and eventual staff of the City Council (...) with identification of the person, to be able to have a greater understanding on the part of the party social responsibility of the city council of its administrative organization and the use of public funds."

The data of City Council workers, whether they are labor, official or temporary, or positions of trust, 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).

According to the City Council's report, of December 3, 2021, this "does not have any specific documentary content of grouped information on the comparison between remuneration received by the labor staff and the official staff of this Corporation as it does not find the salaries of civil servants and labor personnel are assimilated, nor to have the current Job List approved."

Beyond the way in which a City Council treats the information it has at a documentary level, there can be no doubt regarding the fact that the City Council must necessarily have information on the remuneration of its own workers. In any case, the information relating to the remuneration received by workers who provide services to a City Council, which it must have, is "public information" for the purposes of article 2.b) of the LTC, subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (Article 20 et seq. LTC) .

This, regardless of whether or not the City Council has a "remuneration comparison" between different professional groups, or of the situation in which the municipal RLT finds itself, since

these circumstances do not prevent the City Council from effectively having the information requested by the workers' representative, and that this information is "public information" for the purposes of article 2.b) LTC.

In any case, 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 regulated in the LTC.

III

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

The applicant links his request for remuneration information made to the City Council on July 27, 2021, with his status as a delegate of the City Council's official staff - which is certified in the file sent by the GAIP-, with the purpose of "being able to have a greater understanding on the part of the social part of the town hall of its administrative organization and the use of public funds". Given this condition of the claimant as a representative of the workers, it is necessary to take into account first of all its specific regulations.

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 boards and personnel delegates have the following functions, among others: "a) Receive information, on the personnel policy, as well as on the data referring to the evolution of the retributions, likely 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.

As can be seen from these regulatory provisions, 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.

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.

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 alleging his status as a representative of the civil servants of the City Council, and to learn about the use of public funds and the administrative organization of the City Council, without being more specific regarding the need or belonging to access the individualized information of the affected workers, it does not seem that based on this regulations the representative of the workers must access the requested information with direct identification of some of the workers affected, in the terms of the claim, specifically, the positions of trust and the eventual staff of the City Council.

However, regardless of this, it must be noted that this does not exhaust the possibilities that the representatives of the workers may have to access this information.

In this sense, to analyze the possibility of communicating the information 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

Given that the claimant is requesting remuneration information for all City Council workers, with identification of positions in the case of civil servants and workers, and with identification of the person in the case of positions of trust and contingent personnel, we will have to adhere to what is derived from the limit consisting of the right to the protection of personal data contained in articles 23 and 24 of the LTC.

The data referred to the category or position occupied by a worker, in principle would not be particularly protected data under 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 is that the Public Administrations must be accountable to the citizens, in relation, among other issues, to the management and destination that they give to public funds, such as those allocated to the remuneration received by public sector workers. 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 accountable, with more reason, if applicable, it will be necessary to recognize this ability to the workers' representatives, as in the case at hand, in relation to the information that can be relevant to the development of their 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 staff of the City Council.

v

With regard to access to the list of "all the remuneration of the positions of trust and temporary staff of the City Council", 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 local area, according to article 7.1 of the RLTC:

"1. For the purposes of this decree, they are considered high-ranking officials and local management personnel, in any case, elected officials and the holders of bodies that exercise management or executive functions of a superior nature, adjusting their performance to the guidelines set by the governing body of the corporation, in accordance with the provisions of the local regulations."

Given these regulatory provisions, it is clear that the elected positions and managerial staff of the City Council must be considered as senior positions, for the purposes of the application of article 11.1.b) LTC.

Apart from this, with respect to the positions of trust and the eventual staff, there are elements that would favor the weighting in favor of access to the remuneration information requested by the claimant.

In this sense, 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 they carry 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 worker, in the weighting of the rights that must be done with respect to the

requests for access to information, that is, in what we could call the "public interest test" which must determine whether access to information contributes to a better knowledge of the criteria of organization and operation and of how public resources are allocated, it is considered that in relation to the positions referring to positions of trust and eventual staff, due to their uniqueness, high level of remuneration or responsibility, 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 in its disclosure.

For weighting purposes, it must be taken into account that the claimant makes the request for the remuneration information for the positions of trust and occasional staff, "to be able to have a greater understanding on the part of the social part of the city council of the administrative organization of this and the use of public funds."

Considering that, as has been said, a common feature of these jobs is the discretion in their appointment, a greater degree of responsibility, together with a high level of remuneration, it is clear that it can be relevant to any citizen and, by extension, for the workers' representatives, to know the allocation of municipal public funds to these types of jobs, with identification of the people who receive these payments.

In these cases, it is not contrary to the data protection regulations to provide the information to the claimant, since the aforementioned regulatory provisions would justify the delivery of this retributive information, with identification of the person who holds the job in question.

Therefore, there can be no doubt that, for this type of municipal employees and positions, of trust or of a high degree of responsibility that are usually attributed to positions of trust and temporary staff, it would be justified, from the perspective of data protection, provide individualized information for the remuneration concepts referred to by the claimant, along with their identification, level and position they hold.

VI

With regard to the rest of the City Council's employees (labour staff and civil servants), the claimant requests to know the "list of all the annual remunerations for each of the positions, identifying each position but not the people who occupy them (...)."

Regarding these workers, to the extent that, in principle, they would not be included in the type of workers to which we have referred in the previous section, article 11.1 of the LTC applies from the outset, which establishes that information on remuneration 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 25.1 of the RLTC:

"1. For the purposes of letter e) of article 11.1 of Law 19/2014, of December 29, is understood by:

a) Remuneration: the financial compensation that can be received for the work carried out.

Information must be given on the overall gross annual remuneration of the different bodies and levels, with details of the basic remuneration and the supplements that correspond according to the regulations, and the agreement or non-agreements that apply. In this sense, the remuneration tables of the personnel in the service of the public administrations must be published, with an indication of the basic and complementary remunerations, in the case of civil servants, and with an indication of the basic remunerations, complement of seniority, extraordinary payments and other supplements and specific bonuses according to the agreement or outside the agreement, in the case of labor personnel.

(...)."

Based on the information available, the claimant would be referring to the remuneration information in article 25.1 RLTC - basic remuneration and supplements, except for the "seniority supplement" (three years)- , and not to other remuneration concepts, such as per diems or compensations (art. 25.1, sections b) and c) RLTC, respectively).

In any case, it is clear from the outset that the information must be published in aggregate.

In any case, it should be borne in mind that article 9.1.d) of the LTC establishes that public administrations must make public:

"d) The list of jobs for official, labor and casual staff, and the staff and the list of temporary contracts and internships not linked to any job in said list of positions."

On the other hand, article 74 of the Basic Statute of the public employee, approved by Royal Decree Legislative Decree 5/2015, of October 30 (EBEP), establishes:

"Public administrations must structure their organization through workplace relationships or other similar organizational instruments that include, at least, the designation of positions, professional classification groups, bodies or scales, if applicable, to which they are attached, the provision systems and the complementary remunerations. These instruments are public." .

As for local bodies, art. 283 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMLC) establishes:

"(...)

2. The local bodies must form the list of workplaces in their organization, in accordance with what is established by the basic legislation of the State and of the development of the Generalitat.

3. The list of jobs may exceptionally attribute to one or some of these positions the condition of multi-purpose, in accordance with the special needs of the local body. In this case, the corresponding time periods and the general selection conditions must be determined

they must understand the requirements required to perform the different functions assigned to the workplace.

4. A copy of the list of jobs - as well as the workforce - must be sent to the competent Department of the Generalitat in matters of cooperation with the local Administration of Catalonia, within thirty days from approval, as well as publishing it in full in the BOP and the DOGC.”

Therefore, the advertising of the RLT, which includes the complementary remuneration of each job, derives from both the civil service regulations and the transparency regulations provided for in article 9.1.d) LTC.

On the other hand, it is also clear that once the group to which a certain job is attributed is known through the RLT, this can easily be related to the basic remuneration for the staff in the service of the public administrations established in the successive budget laws for each group of the public function.

It could be thought that the publication of the RLT has no impact on the protection of personal data. But it is obvious that although it does not include the direct identification of City Council workers, in many cases they can be easily identified indirectly.

The request for access does not specify a specific purpose of access in relation to the remuneration information of civil and labor workers. However, it could be inferred that the purpose of the access is the same as that stated in relation to the positions of trust and eventual staff, that is to say, to be able to have a greater understanding of the administrative organization of the City Council and the use of public funds.

Obviously, it cannot be overlooked that, to the extent that directly (knowing the identity of the worker) or indirectly (specifying the information for each of the individualized positions or knowing by other means the recruitment or appointment of the labor worker or the civil servant to occupy the only position of a certain category or level), the affected person can be identified, the information provided in these terms would allow access to information on the approximate remuneration received by a specific worker and therefore allows to obtain a profile economic of the worker.

However, given the terms of the current regulation on the publication of the list of jobs, it does not appear that access to the remuneration information contained in the RLT or to the information on the basic remuneration of each position can be restricted of work

conclusion

With regard to the positions of trust and temporary staff of the City Council, given the type and characteristics of these positions, it is justified from the perspective of data protection, to provide information individualized by the remuneration concepts referred to by the claimant , along with their identification, level and position they hold.

With regard to the rest of the City Council's employees (employees and civil servants), the data protection regulations do not prevent providing information on the basic and complementary remuneration of each job, without identifying the people who occupy

Barcelona, January 12, 2022

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