

IAIP 1/2021

Legal report issued at the request of the Parliament of Catalonia in relation to the claim for the denial of access to information on certain salaries of the Parliament's staff and information on the staff who have taken advantage of the age license since 2009

The body guaranteeing the right of access to public information of the Parliament of Catalonia asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim (...), presented by a citizen in relation to with the denial by Resolution 1/2021, of the Executive Coordination of the Directorate of Parliamentary Studies, of access to certain information on the salaries of the staff of the Parliament and also information on the staff who have received the license d age since 2009.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the Parliament of Catalonia, and in accordance with the report of the Legal Counsel, the following is reported:

Background

1. On April 8, 2021, a citizen, who identifies herself as a journalist, wrote to the Parliament of Catalonia, requesting access to the following information:

- "- I request to know the salary of the current general secretary, chief legal officer and auditor of accounts: base salary, specific supplement, three-year salary and any other remunerative concept for their job Full annual and monthly salary with dirty.**
- I request to know the salary of all civil servants broken down by basic salary, specific supplements and three years: full annual and monthly salary with gross.**
- I request to know the civil servants (with their group, level and type in the personnel scale) who have taken advantage of the age license (regime provided for in the statutes of the internal regime and government of the Parliament) since of the year 2009. Also the percentage of salary that has been paid to them based on their seniority: that is, their basic salary plus the specific supplements associated with their condition and the three years corresponding to the years worked in the 'public administration."**

2. On May 10, 2021, the Directorate of Parliamentary Studies of the Parliament of Catalonia issues Resolution no. 1/2021, in which it resolves to "appreciate the request for access to the salaries of the civil servants who hold the jobs about which information is requested, as well as those of the rest of the civil servants of the Parliament of Catalonia, the which can be located on the Transparency Portal (...)", and rejects access to the requested information, specifically, the perception of the supplements (three years). The Resolution encloses aggregated information on the licenses granted by age, without identifying the affected workers.

3. On June 7, 2021, the applicant submits a claim against Resolution no. 1/2021, before the Authority for Guaranteeing the Right of Access to Public Information (OGDAIP) provided for in article 219 of the Parliament's Regulations, considering that the information provided by the Parliament is insufficient.

4. On June 30, 2021, the body guaranteeing the right of access to public information of the Parliament of Catalonia, the Parliament of Catalonia requests this Authority to issue a report in relation to the claim presented against the Resolution of the Directorate of Parliamentary Studies. Given that the information requested contains personal data, the Parliament requests the issuance of the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to information public and good government. The body guaranteeing the right of access to public information of the Parliament explains that the request for a report to the APDCAT is based on articles 216.3 and 219.1 of the Regulations of the Parliament of Catalonia, given that in the scope of the right of access to information and documentation of the Parliament of Catalonia, this body is in charge of resolving complaints.

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.

Given that the request for a report to this Authority is formulated by the Parliament of Catalonia, it must be taken into account that, according to the fifth additional provision of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), section 1, the Parliament of Catalonia, in accordance with the principle of parliamentary autonomy recognized by article 58.1 of the Statute of Autonomy, must make the amendments to the Regulations of the Parliament and of its internal regime and governance rules that are necessary to fulfill the requirements established by this law.

According to article 216.3 of the Regulations of the Parliament, the Bureau of the Parliament must regulate the conditions for exercising the right of access and the procedure that must be followed to resolve the requests. This regulation must be inspired by the principles and rules established by the legislation on transparency, access to public information and good governance.

According to article 219.1 of the Regulations of the Parliament, the Parliament must have a body guaranteeing the right of access to public information. According to the second section of this same article, the Parliament, through an agreement with the GAIP, grants this body the competence to resolve citizens' claims against the denials of the right of access agreed by the Parliament.

Taking this into account, the Body for Guaranteeing Access to Public Information of the Parliament of Catalonia (OGDAIP), requests this Authority to issue the report provided for in article 42.8 of the LTC, given that, as stated by the OGDAIP, the requested information contains personal data.

Having said that, 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 affected persons, (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 movement of such data and which repeals Directive 95/46/CE (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.

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

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 applicant, who makes his request for access to information as a journalist, motivates it by the fact that "we are doing several reports on the remuneration of public managers within the framework of public sector entities, the Generalitat and all statutory bodies."

Specifically, the applicant requests access to remuneration information of the current secretary general, the chief legal officer, and the auditor, remuneration information of all the Parliament's official staff, and also requests to know personnel information official who would have taken advantage of the age license since 2009.

The purpose of the LTC is 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 mentioned 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 the one supplied by the other obliged subjects in accordance with the provisions of this law".

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

There can be no doubt that the retributive information that may be perceived by the positions mentioned by the claimant and the staff of the Parliament of Catalonia, is "public information" for the purposes of article 2.b) of the LTC, subject to the regime of 'access 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 s

As stated in the Preamble of the LTC "With regard to the Parliament, a specific additional provision establishes that, in accordance with the principle of organizational autonomy that recognizes

article 58.1 of the Statute of Autonomy, will have to make the necessary adaptations to comply with the requirements of the Law, without this in any case leading to an inferior guarantee regime for citizens."

Regarding the deployment of the LTC and taking into account the third final provision, section 3, of the LTC, the fifth additional provision of the LTC, section 2, establishes a specific regime of the Parliament of Catalonia in terms of transparency , in the following terms:

"1. The Parliament of Catalonia, in accordance with the principle of parliamentary autonomy recognized by article 58.1 of the Statute of Autonomy, must make the amendments to the Regulations of the Parliament and its rules of internal regime and governance that are necessary to fulfill the requirements established by this law.

2. For the purpose referred to in paragraph 1, the Parliament must:

a) Update and expand the procedures for the participation of citizens in the process of drawing up laws, especially with the use of electronic means, of in accordance with the provisions of article 29.4 of the Statute. b) Establish and regulate its own transparency portal.

c) Facilitate access to parliamentary documentation and information. d) Provide information relating to the fulfillment of the obligations of deputies and senior officials in matters of incompatibilities, declarations of activities and assets and other obligations and duties related to their status, and also on their remuneration. (...) h) Establish a system of guarantees of its own to ensure compliance with the obligations derived from this section, which must include at least the creation of a complaint body inspired by the principles established by chapter IV of title III. (...)"

Regarding this, it should be taken into account that the first section of Resolution 1/2021 resolves to estimate the request for the right of access to the remuneration of the civil servants who hold the jobs about which the information is requested , as well as those of the other officials of the Parliament of Catalonia, which can be found on the Transparency Portal. For these purposes, please refer to the ORGANIZATION OF THE PARLIAMENTARY ADMINISTRATION section of the Transparency Portal.

However, the second section of Resolution 1/2021 rejects the request for access to information on the amount that each official receives as seniority supplement (art. 95.1.a) ERGI), "given that the perception of this supplement by officials is not subject to any discretionary criteria, but its amount and perception is regulated in article 96 of the Statutes of the Internal Regime and Government of the Parliament."

On the other hand, although the request for information on the calculation of the official staff that has been accepted on the age leave is not appropriate, as stated in the previous section, in all complaint, the person making the claim states: "The possibility of knowing the full salary received by civil servants under the age leave regime was also denied, as well as the information relating to the three years they have accumulated. The specific percentage of the salary received by each of the officials received - indicated by scale - has not been provided

in the age leave regime nor how long they have been in this situation (only an average has been given without specifying the period that corresponds to each official).”

Therefore, the object of this claim is limited to the above-mentioned seniority supplement and the information on the specific percentage of the salary received by each of the civil servants included in the age leave regime or the length of time they have been in this situation

IV

Given that the claimant is requesting remuneration information for certain positions (general secretary, chief legal officer and auditor), and also for all Parliament officials, we will have to adhere to what is derived from the limit consisting in the right to the protection of personal data collected in articles 23 and 24 of the LTC.

In this respect, article 215 of the Parliament's Regulations must be taken into account, according to which:

"1. The right of access to information may be denied or restricted if any of the causes established by the legislation on transparency, access to public information and good governance occur.

2. The right of access may be denied or restricted when the knowledge or disclosure of the information entails a detriment to: (...) f) The protection of privacy, of other legitimate private rights and of personal data . (...).”

Therefore, we will have to take into account the limitations set out in articles 23 and 24 of the LTC, regarding the protection of personal data.

The information on the remuneration received by the workers, in principle, would not be particularly protected data under the terms established by article 23 LTC, so it will be necessary to take into account the criteria of article 24.2 of the LTC, according to which :

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

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

One of the objectives of the transparency legislation (art. 1.2 LTC) is that Public Administrations must be accountable to citizens, in relation, among other issues, to the management and destination that they give to public funds, such as those allocated to the remuneration received by public sector workers, of which the Parliament is a part.

Thus, the transparency legislation provides citizens with the ability to control public funds, in short, to monitor the use of public money, as set out in the Preamble of the LTC.

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 all of Parliament's official staff, in addition to three positions that the claimant specifically identifies.

At the outset, it is necessary to take into account the provisions of the Parliament's regulations (Regulation and ERGI), and of the LTC in retributive matters.

Article 95 of the ERGI regulates the remuneration concepts of Parliament staff in the following terms:

"1. The remuneration of the staff in the service of the Parliament includes the following concepts: a) The basic remuneration, integrated by the salary corresponding to the group or body to which it belongs and the perception for seniority. b) Complementary remuneration, integrated by: First. A supplement intended to compensate for the particular conditions of each job, in consideration of the special technical difficulty, responsibility, incompatibility and dedication.

second A supplement intended to reward the degree of interest, initiative and effort, and the contribution to the permanent improvement of administrative work."

As set out in Resolution 1/2021 of the Parliament in response to the request for information presented, by application of the principle of active publicity (article 8 of the LTC), article 211 of the Regulations of the Parliament provides that the Parliament must make public, among others, the information on "The staff, the list of jobs and the remunerative regime of the staff in the service of the Parliament, including senior positions." (art. 211.2.b) Regulations of the Parliament).

As this Authority has agreed, and as Resolution 1/2021 of Parliament points out, the information provided by the RLT - which, as far as Parliament is concerned, as Resolution 1/2021 states, is available on the Transparency Portal of Parliament (art. 6 ERGI)-, is linked to the workplace, and is therefore independent of the specific person who occupies this position. Therefore, certainly, the RLT does not include specific information about the seniority supplement ("triennis") that each worker receives.

As has been said, with regard to remuneration information that goes beyond what must be contained in the RLT, that is directly related to the natural person who holds the job (such as the three-year period), it is not foreseen an obligation to publish (active advertising).

However, it must be noted that, despite this, the transparency legislation would enable, through the right of access, the knowledge of this information (of the three years that are part of the remuneration), with respect to senior positions or managerial staff, in this case, the Parliament.

Article 11.1 of the LTC 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, the societies, the foundations and the consortia, and the compensations that have to be perceived when ceasing to exercise the position. (...) e) The general information on the remunerations, compensations and allowances received by public employees, grouped according to the levels and bodies."

Although none of the officials referred to in the request are senior officials or managerial staff, it should be remembered that this Authority has been upholding the criteria (IAI 3/2019, IAI 33/2019, IAI 44/2019, IAI 1/2020, or IAI 1/2021), that the transparency obligations of article 11.1.b) LTC can be extended with respect to requests for access to information that affect personnel occupying positions of special trust or special responsibility within an organization, positions of free appointment (or that involve a certain margin of discretion in terms of their provision), or that entail a high level of remuneration.

With regard to the secretary general of the Parliament according to article 249 of the Regulation of Parliament:

- "1. The General Secretary of the Parliament, under the direction of the President and the Bureau of the Parliament, is the superior head of all the staff and all the services of the Parliament and fulfills the technical functions of support and advice of the governing bodies of the Parliament, assisted by the lawyers of the Parliament.
2. The general secretary is appointed by the Bureau of the Parliament, at the proposal of the president, from among the lawyers of the Parliament."

As for the lawyer, according to article 3 of the ERGI, he/she advises and assists the secretary general in the performance of his/her duties, coordinates the Legal Services and exercises the other powers delegated by the secretary general, which replaces in cases of vacancy, absence or illness (section 1). According to paragraph 2 of the same article, the lawyer is appointed by the Bureau from among the lawyers of the Parliament.

The positions of general secretary and lawyer are freely appointed positions.

According to article 63.1 of the ERGI: "The jobs that, in accordance with the regulation of these statutes, must be covered by this system and the positions that, due to trust, are provided by free appointment of the managerial nature or of the special responsibility, are determined in the relationship of jobs."

With regard to the position of auditor/major, according to article 31.1 of the ERGI: "The Audit Office of Accounts and Treasury has the following functions: a) Prepare the preparatory work and draft the preliminary draft of the Parliament's budget. b) Organize and direct the accounting of the Parliament. (...)."

According to article 32.1 of the ERGI: "At the head of the Auditor's Office of Accounts and Treasury is the auditor, who executes the instructions and directives of the deputy auditors."

Taking this into account, in the weighting of the rights that must be done with respect to requests for access to information on the information related to the seniority supplement, that is, in what we could call the "interest test public" 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 can be considered that the three jobs to which it refers (secretary general, attorney general, and auditor), although they do not qualify as "senior positions", they would be positions that, due to their uniqueness and high level of responsibility, and also due to the level of remuneration that usually are associated, or due to the fact that they are freely appointed (in the case of general secretary and senior lawyer, according to the information available at the LRT), knowledge of their remuneration, including three-year terms, 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.

IV

On the other hand, with regard to other personnel in which these circumstances do not occur, in principle, given that these would be jobs included in the LRT with a lower level of responsibility than the previous ones, and consequently, with a lower level retributive, the evaluation of the use of public resources can be done by having information on the three years grouped by category or according to the different types of jobs.

For this reason, it does not seem to be justified to provide access in an individualized way to the remuneration received in terms of three years for each specific official, 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 people affected. It should be borne in mind that the purpose of the transparency legislation in this case should not be to allow control of a worker's income, but the efficient use of public resources.

The claimant argues, in his Claim against Resolution 1/2021, of the Parliament, about the high economic cost represented by the collection of the seniority supplement by the Parliament's staff.

According to article 96 of the ERGI:

"1. Each official of the Parliament must receive an amount equivalent to 5% of their remuneration for each three years of seniority as an official of the Parliament.

2. For the calculation of seniority, the time of service provided in other public administrations is recognized."

Thus, having information about the three years, in particular, could be necessary for the purposes that the citizen could control the management of economic expenditure for this concept.

However, from the perspective of data protection, it should be pointed out that this purpose could also be fulfilled without the need to sacrifice the privacy of the workers affected, because it would be possible to facilitate a relationship of the amounts received in terms of three years,

without identifying the workers. It should be remembered that according to article 5.1 b) of the RGPD "the data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Therefore, in this case, the purpose of transparency can also be achieved in an anonymized way and grouped by groups, so that each group has a sufficiently large number of workers to prevent the identification of the people affected.

v

Finally, we must refer to the request for information on the staff who have been granted the age license since 2009 (point 3 of the request made) as well as the percentage of salary that He has remunerated them based on their seniority.

According to the provisions of article 79 of the ERGI, the following is provided:

"1. Parliament staff who have been providing services to Parliament for fifteen years or more, once they have reached the age of sixty, can opt for a license by age, with the conditions and assumptions that are determined in the corresponding instructions, with the prior agreement of the Negotiation table. This license has a maximum duration of five years, which must be immediately prior to the legal retirement age corresponding to the person requesting it. (...).

2. For the purposes of recognizing the right to opt for the license by age, every four years of services provided in another public administration, in the same qualification group that is held at the time of application, are counted as a year of services rendered to Parliament. The rest of the services provided in another public administration will be computed in accordance with the provisions of the rule that develops this topic.

3. The staff who are eligible for the license by age have the right to receive a percentage of the remuneration they received at the time of the request, excluding any remuneration derived from the provision of extraordinary services, in accordance with the rule that the Bureau of the Parliament dictates in this regard.

4. Remuneration during leave by age is updated annually taking into account the increase in salary of active staff in Parliament, and Social Security contributions are paid under the same conditions as for the provision of effective services. (...)."

At the outset, we recall that Resolution 1/2021 considers the request regarding the calculation of civil servants who have taken advantage of the age license, and would have provided a summary document to that effect (point 3 Resolution).

However, in the Appeal presented by the claimant, he reiterates the request, which specifies "the total, monthly and annual gross remuneration, individualized for each job, so that the total amount of public money can also be known aimed at paying monthly and annually the salaries of officials who are in this administrative situation. Also the specific salary they perceive, which can be found between 7% and 100% of the salary they received when they were in full exercise of their professional activities."

On this issue, and taking into account the considerations that have been made regarding the individualized information on the three years perceived by Parliament officials who do not hold jobs of special responsibility or trust, it must be said, for the purposes of the necessary weighting (art. 24.2 LTC and art. 215 Regulation of the Parliament), which according to the provision of article 79 of the ERGI, would be a remuneration of a regulated nature, not subject to discretionary criteria with regard to its perception, so that, in principle, it does not seem relevant to know the identity of specific civil servants who have received this supplement, but rather the number of people affected, the percentage of remuneration paid and the amounts allocated to them.

Considering the general purpose of the transparency regulations is to allow control by citizens regarding the use of public funds, it could be relevant, for transparency purposes, to provide information on payments for this concept, broken down by levels or categories of officials, but without the need to identify or individualize this information with respect to each worker in particular.

In any case, the data protection regulations would not prevent the provision of this information about deputies, senior officials, managers or other 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.

conclusion

The data protection regulations do not prevent the provision of information on the seniority supplement received and the amounts or percentages of the salary received by reason of the age license by senior officials and managers of the Parliament or positions that can be considered trustworthy, or of free appointment, or of special responsibility, or that involve high levels of remuneration, as would be the case of the positions of general secretary, attorney general or auditor of accounts. On the other hand, access to the rest of the staff would not be j

Barcelona, July 23, 2021