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Autoritat Catalana de Protecció de Dades

Opinion in relation to the consultation regarding certain issues related to access to personal data of officials of the Parliament of Catalonia

A query relating to certain issues related to access to personal data of officials of the Parliament of Catalonia is presented to the Catalan Data Protection Authority.

As explained in the consultation, this has as antecedents a request for access to public information made by a journalist who requested access to the following information:

"1. The first and last name and position held each year of all civil servants who have held legal, comptroller or similar positions, at level 17 or higher, since 2008 and for each of the years until 2021.

2. From each of the above, the total remuneration received, year by year, including basic salary and all supplements.

3. Of each of them, who and when has taken advantage of the so-called "licence by age" regime."

This request was resolved in the following terms:

a) Provide the first and last names of the civil servants who currently hold the positions of general secretary and chief legal officer, as well as their current remuneration.

b) Decline to provide the name, surname and position held each year of all officials who have held legal, comptroller or similar positions, at level 17 or higher, since 2008 and for each of the years until 2021.

c) Facilitate the remuneration regime that includes the remuneration table that includes the salary and the supplements that are attributed to officials of the A1 group at level 17 or higher, as well as the List of jobs of the Parliamentary Administration, where include the jobs that are the subject of the request, corresponding to the current budget year, in accordance with the principle of data minimization established in article 5 of the RGPD.

d) Decline to provide the total remuneration received, year by year, including basic salary and all supplements of all civil servants who have held legal, comptroller or similar positions, at level 17 or higher, since 2008 and for each of the years until 2021.
e) Facilitate the remuneration received by civil servants who have held legal, auditor or similar positions, at level 17 or higher, from the year 2017 and for each of the years until 2021, in an aggregated form, in order to preserve the data personal information of the affected persons, in accordance with the principle of data minimization established in article 5 of the RGPD.

f) Refuse to provide the first and last names of civil servants who have held jobs at level 17 or higher who, since 2008, have taken advantage of the so-called "age leave" regime.

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g) Facilitate information on when and which civil servants who have held jobs at level 17 or higher have taken advantage of the age license since 2008, identifying them with the indication of their group, level and workplace, without providing the corresponding names and surnames, to preserve your personal data, in accordance with the principle of data minimization established in Article 5 of the RGPD.”

Against this resolution, the journalist requesting the information submitted a claim to the OGDAIP in which he requested access to the information as he had requested it at the time.

Having exposed this background to the consultation, the considerations of the OGDAIP are collected in relation to the arguments on which the claimant based his request and the application of the criteria that this Authority has previously highlighted on this subject. It also compiles the allegations that, in terms of denying access, were made by the affected officials.

With all these antecedents, the OGDAIP presents the following considerations to the APDCAT:

"1. When a body has to decide whether to give access to personal data related to staff remuneration in the service of the administrations, how should it assess if it is dealing with "places of special responsibility"?

2. When a body has to decide whether to give access to personal data related to staff remuneration in the service of the administrations, how should it assess if it is dealing with "places with a high level of remuneration"?

3. In the specific case in question, access must be given to the requested data and, therefore, a list must be given with the identification of officials from level 17 onwards who have held the positions of lawyer and comptroller from 2008 to the present, with the details of all his remuneration including those of a personal nature such as the three-year? This implies giving data of people who are no longer occupying the jobs at present.

4. Should the people who have taken advantage of the age-based license scheme be identified by name, detailing when they did so?

5. How does the fact that the applicant is a journalist affect the weighting that must be done by the bodies that have to give access to personal data?

6. In the case of having to deliver public information with personal data, it is correct to indicate in the resolution that access to the information does not enable a public disclosure of these data arguing that the right to freedom of expression and information is subject to the right to intimacy and privacy ?

7 . Can the information given be limited to the last five fiscal years, or if the administration has the information and has not destroyed it, must it be handed over from 2008, as requested by the journalist?"

Analyzed the query, which is accompanied by the request for access to information made by a journalist at the Parliament of Catalonia (20/01/2022) , of the report made by a lawyer from

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the Legal Services of the Parliament (08 /01/2022), of the report of the DPD of the Parliament (22/02/2022), of the resolution of the executive coordinator of the Department of Management and Information Resources of the Parliament (28/03/2022), and of the claim made before the OGDAIP (27/04/2022), in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

In any case, it should be noted that the considerations made in this opinion refer exclusively to the assessment of the impact that access to public information may have with respect to the personal data it may contain in the terms established by 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 (RGPD), and Organic Law 3/2018, of December 5 , of protection of personal data and guarantee of digital rights (LPDGDD). Therefore, any other limit or reason for admission (such as the derivative of the complex task of preparation due to the wide period of time that buys the request) is outside the scope of this opinion that does not affect personal data.

II

At the outset, there is no doubt that the information on which the query relates to the remuneration received by staff in the service of the Parliament of Catalonia is information that contains personal data in the terms of article 4.1 RGPD (*"all information about an identified or identifiable physical person ("the interested party"); an identifiable physical person will be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person; ".)*

Nor does it raise doubts that the communication of this information is a processing of personal data, understood as " *any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration , organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction"* (article 4.2 RGPD).

In accordance with the RGPD all data processing it must be lawful, loyal and transparent in relation to the interested *party (article 5.1.a)).* In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD, among which for the purposes of this opinion it is necessary to take into consideration those provided for in letters c) (*"the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment")* i e) (*the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;)*

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As can be seen from article 6.3 of the RGPD and expressly included in article 8 of the LOPDGDD, data processing can only be considered based on the legal bases of article 6.1.c) and 6.1e) of the RGPD when so established by a rule with the rank of law.

At the same time, according to article 86 of the RGPD: *"The personal data of official documents in the possession of some public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."*

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), which aims, among others, to *"regulate and guarantee people's right of access to public information and documentation" (* article 1.1.b)), is the rule with the rank of law that enables the aforementioned data communications and establishes the terms in which they must be carried out within the framework of the RGPD.

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).

According to article 2.b) of the LTC it is *"public information: the information prepared by the Administration and that which it has in its possession 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."*

The remuneration information of the officials of the Parliament of Catalonia on which the consultation is being considered is public information for the purposes of article 2.b) of the LTC.

The fifth additional provision of the LTC in relation to the third final provision, section 3, of the same legal text, establishes a specific regime for the Parliament of Catalonia, 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 citizen participation in the law-making process, especially with the use of electronic media, in accordance with what is established in article 29.4 of the Statute.*
>
> *b) Establish and regulate its own transparency portal.*
>
> *c) Facilitate access to parliamentary documentation and information.*

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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.

e) Facilitate public access to the curriculum vitae of persons proposed to occupy public positions whose appointment is the competence of the Parliament.

f) Define and develop the rules of good governance and open governance in the parliamentary sphere.

g) Create a register of self-interest groups.

h) Establish an own system of guarantees 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 .

3. Parliament must make the relevant regulatory adaptations to comply with what is established in section 2 before the entry into force of this law. The regulation established by the Parliament must determine the necessary adaptations derived from the institutional nature of the Parliament, which in no case can lead to a lower guarantee regime than that established by this law.

4. Parliament must establish a procedure to consolidate the laws that are the subject of partial modifications with the aim of simplifying the system, improving its quality and contributing to the guarantee of legal security. The consolidation procedure must give rise to texts with legal value that replace and repeal the laws subject to consolidation."

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In accordance with these forecasts, article 215 of the Regulations of the Parliament of Catalonia (RPC) establishes that the right of access to public information may be denied or restricted if any of the causes established by the legislation on transparency, access to public information and good governance. In addition, the second section of this article 215 in letter f) establishes that the right of access may be denied or restricted if the knowledge or disclosure of the information entails a detriment to the protection of privacy, of other legitimate private rights and personal data.

Regarding the application of the limits to the right of access to public information, the third paragraph of article 215 establishes:

"3. Limitations on the right of access must always be applied to the benefit of that right and cannot be extended by analogy. If the application of any of the limits affects only part of the requested information, access to the rest of the data must be authorized. Access must also be authorized if the protection of public rights and interests referred to in section 2 can be guaranteed through the removal or anonymization of sensitive data, provided that the information is not denatured or becomes of difficult or equivocal understanding ."

In the case of staff serving the Parliament, the remuneration concepts, regulated in article 95 of the Statutes of the internal regime and government of the Parliament of Catalonia (ERGI), must be taken into consideration, which establishes:

"1. The remuneration of the staff serving 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."

III

First of all, questions 1 and 2 of the consultation are analyzed, relating to determining how the body that must decide whether to grant access to personal data should assess whether workplaces are *"places of special responsibility"* and *" positions that entail a high level of remuneration"* .

It should be specified that the different situations relating to the special responsibility of the workplace, the special trust, the fact that these are freely appointed positions, which involve a certain margin of discretion in terms of their provision or which involve a high level of remuneration are aspects that the body that must decide on access must assess jointly and not in isolation and that this joint assessment will lead to determining the public interest in knowing the remuneration of these positions work

It is not easy to establish general criteria that are valid for all public entities to define that a job is of special responsibility since in each case it will depend on the legal regime applicable to the personnel who make up it and on the internal organizational structure of the entity

In fact, for example, the same EBEP, in its article 80, establishes with regard to career civil servants, that " *The civil service laws that are issued in implementation of this Statute must establish the criteria to determine the positions that, due to their special responsibility and trust, can be filled by the procedure of free appointment with public call."*

In the case of civil servants, the criteria for determining that a position is of special responsibility or trust are set by the different public administrations. In any case, however, career civil servants who occupy jobs that have been covered by the free appointment procedure will implicitly carry their classification as of special responsibility or trust.

Also, in the case of temporary staff, the consideration as a position of trust is implicit in its own legal configuration which derives from article 12 of the EBEP which defines it as *"the one who, by virtue of appointment and on a non-permanent basis, only performs functions expressly qualified as trust or special advice; it is remunerated against the budget appropriations set aside for this purpose"* and, therefore, no doubt can be raised by the body that must make the judgment of the public interest, about access to the remuneration information of this staff.

Similarly, this category will also include both managerial positions and labor personnel who are bound by a senior management contract.

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With regard to the rest of the jobs, the entities that make up the public sector have their own job classifications based on which the levels and the associated remuneration are attributed according to qualification criteria, specialization, responsibility, competence, command, etc. For example, civil servants are classified in bodies, scales and levels (in the case of the Parliament in 20 levels) that respond to an assessment of each job, given the criteria of qualification, specialization, responsibility, competence and command functions. Higher levels are assigned higher pay. It is clear that the prevalence of the public interest in the disclosure of information decreases as the hierarchical level of public employees decreases.

In general, the criteria that can be applied to consider that a position is of special responsibility are, in addition to the form of provision (free appointment, systems with a margin of discretion of the body that appoints it), the fact that in the case of command positions, that the holding of accounts of their activity (office of affairs) is done directly with the management or parliamentary appointment bodies, the greater degree of participation in the decision-making of the organization in the which they are linked to, together with the fact that they correspond to positions with a high retributive level within the scale in which they are integrated.

To determine whether a job has a high level of remuneration, the remuneration established for the different jobs within the public entity where it is located must be taken into consideration. Thus, taking into account the remuneration tables attached to the consultation, it seems that in the case of the civil servants of the Parliament of Catalonia this could correspond to levels 17 to 20.

In any case, as has already been pointed out, and as will be developed below, the decision on the possibility of giving access to the full remuneration of the staff in the service of the Parliament, must be made taking into account not only in isolation, the level of remuneration, but also taking into account the rest of the criteria relating to the special responsibility or the character of a position of trust, issues regarding which it is the Parliament of Catalonia itself that has the most precise information to be able to -value it

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IV

Next, the third question asked will be analyzed, that is, about the possibility of giving access to the remuneration received by civil servants at level 17 onwards who have held the positions of lawyer and comptroller from 2008 to the present, identifying them . This section will also analyze the fifth question, related to if the fact that the applicant is a journalist affects the weighting that must be done by the bodies that must give access to personal data.

When the published information that is the subject of the access request contains personal data, the referral of Article 215 RPC to the limits provided for in the transparency regulations entails the application of Articles 23 and 24 of the LTC.

According to Article 23, 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 membership, 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 person consents expressly by means of a writing that must accompany the request"* .

In cases where the information does not contain special categories of data in terms of Article 23 LTC, access must be governed by the provisions of Article 24 of the LTC, according to which:

"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 access, especially if it has a historical, statistical purpose or scientific, 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.
(...)."

In principle it does not seem that this information should contain special categories of data in the terms of article 23 of LTC, in which case access to the information should be denied unless the express consent of the affected persons is obtained.

It can also be ruled out that this information is limited to merely identifying data directly related to the organization and functioning of the Parliament of Catalonia in the terms established by article 24.1 LTC. Consequently, access to this information, in accordance with the provisions of article 24.2 LTC, is subject to a prior, reasoned weighting between the public interest in the disclosure of this information and the right to data protection of the officials of the Parliament about which the information is requested, taking into consideration, among others, the time elapsed, the purpose of the access, the fact that it may affect the security of people, etc.

Thus, a first element to be taken into consideration in the aforementioned weighting is that of the purpose of the access. The LTC establishes that the exercise of the right of access is not conditional on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of any rule (Article 213 RPC and Article 18 LTC), but at the same time the purpose that access must have is one of the elements to determine the existence of a public interest superior to access to information.

The purpose of the LTC, as established in its article 2.1, is to establish a system of relationship between people and the public administration and other obliged subjects, based on the knowledge of public activity, the incentive 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. In this aspect of the guarantee of accountability, as set out in the Preamble of the LTC, one of the objectives of the transparency legislation is that Public Administrations must hold citizens accountable in

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relation, among other issues, to the management and the fate they give to public funds, such as those allocated to the remuneration received by public workers.

In this sense, and in general, the fact that access to information contributes to achieving the objectives of transparency legislation, such as facilitating knowledge of the criteria for the allocation and destination of public resources, determines the existence of a public interest in access to information.

At this point, reference should be made to question number 5 included in the consultation, regarding how the weighting to be done by the bodies that must grant access to personal data affects the fact that the applicant is a journalist.

As we have seen, in accordance with the transparency regulations, the access applicant is not required to state in the application the reasons justifying the exercise of the right of access. However, one of the circumstances that can be taken into account in the previous reasoned weighing of the public interest in the disclosure of the information and the rights of the affected persons is the purpose of the access. In this sense, article 17.3 of Law 19/2013 recognizes that, if the reasons are presented, these *"can be taken into account when the resolution is issued"* . Thus, the motivations and specific purposes that may come together in an access request can be decisive when weighing the competing interests and tipping the balance in favor of the person requesting access.

In the specific case that grounds the query, the person requesting the information is a journalist who justifies the need for access in the intense media debate about the salaries and employment status of a number of Parliament workers, and that states to make the request with journalistic criteria of interest and control, asking for information only on those jobs that could be of public interest.

The European Court of Human Rights, in relation to the right to freedom of expression, which includes the right to receive or communicate information and ideas (Article 10 of the European Convention on Human Rights), recognizes the special position of journalists and media - and also other applicants for public information, such as non-governmental organizations, researchers or activists - since they carry out an action, as *"watchdogs"* , which contributes to the 'exercise of the right to give and receive information and, ultimately, to public debate (SSTEDH Bladet Tromso v. Norway (May 20, 1999), Rosiianu v. Romania (June 24, 2014), or Magyar Helsinki Bizottsag v. Hungary (8 November 2016), among many others).

Taking into account the regulatory framework (art. 20.1.d) EC, and art. 10 CEDH), and the jurisprudence, it is made clear that journalists -among other professionals and collectives- would have a prominent role in contributing to the formation of free public opinion. In this sense, the status of journalist of the person requesting access to public information could be an element favorable to access to be taken into account - although not in isolation but together with other elements -, in effects of making a weighting between the public interest in obtaining the information and the rights of the people affected.

In short, the fact that the person requesting the information is a journalist can be an element favorable to access, to be taken into account in the weighting of rights to the extent that the information requested refers to matters of general interest or of outstanding public relevance for the matter it deals with, but they are also not exposed in the case we are dealing with

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special circumstances that require knowing the remuneration received by each and every one of the people with level 17 or higher.

In general, there is no doubt about the prevalence of the public interest in access when it comes to information on which transparency regulations have provided for active publication obligations.

With respect to the remuneration of the personnel serving the Parliament, article 211 of the RPC provides that the Parliament must make public, among others, the information on *"the staff, the list of jobs and the remuneration regime of the staff at the service of the Parliament, including high-ranking officials ." (* art. 211.2.b).

This forecast does not result in a direct obligation to publish the information that is the subject of this query. But yes, the information relating to the remuneration system of the staff in the service of the Parliament.

This Authority has repeatedly made clear (IAI 3/2019, IAI 33/2019, IAI 44/2019, IAI 1/2020, or IAI 1/2021) that in the case of exercising the right of access to the remuneration received by personnel in the service of the Administration, apart from the high-ranking officials and managers in respect of which article 11.1.b) LTC establishes active publicity, the public interest must also prevail in access in the case of personnel who occupy positions of special trust, of special responsibility within the organization or at a high level in the entity's hierarchy, of free appointment, or that involve a high level of remuneration .

Although the law does not expressly provide for the publication on the transparency portal of the remuneration of this type of public employee, in the weighting of the rights that must be done with respect to requests for access to information, that is in what we could call a public interest test that must determine if access to information contributes to a better knowledge of the criteria for organization and operation and how public resources are allocated and if, for this reason, must prevail before the right to the protection of personal data, the weighting should be decided in favor of access.

This makes it possible to answer the third of the questions raised regarding whether access should be given to a list with the identification of the civil servants at level 17 onwards who have held the positions of lawyer and comptroller from 2008 to the present , with the details of all their remunerations including those of a personal nature such as the three-year ones.

At the outset, it is clear that having individualized information on the full remuneration received over a period as long as the one requested allows obtaining not only information on current income but also, with respect to those people who have been working for many years hold one of these jobs, it provides a picture or profile of income earned over a long period of time. The consequences that can have for a person when the knowledge of their financial capacity by third parties is something that needs to be assessed.

On the other hand, it is also necessary to assess the public interest in access. To the extent that we are dealing with information about officials who are neither high-ranking officials nor managerial staff, it will be necessary to analyze whether it is staff who occupy positions of special trust or special responsibility within the organization, positions of free appointment (or that involve a certain margin of discretion in terms of their provision), or that involve a high level of remuneration.

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For this purpose, it will be necessary to analyze both the provisions contained in the RPC, as well as in the Statutes of the internal regime and government of the Parliament of Catalonia (ERGI) and the criteria established by the governing bodies of the Parliament, specifically the document *"Remuneration regime for personnel in the service of the Parliament of Catalonia* ", published in the Parliament's transparency section https://www.parlament.cat/document/intrade/173866

In this document on the remunerative regime for the staff in the service of the Parliament it is established that *"in application of the principle of organizational and budgetary autonomy of the Parliament of Catalonia and attention to the specialization and peculiarities of the organization of work in the "in the parliamentary sphere, civil servants in the service of the Parliamentary Administration are subject to a specific remuneration regime, as are all legislative assemblies as an expression of the democratic principle of separation of powers".*

According to this document, civil servants at level 17 onwards are included in group A1, with regard to which the document distinguishes three types of salaries:

" *a) the one corresponding to the general secretary and the lawyer;*
b) the one corresponding to lawyers and the auditor, who perform functions of superior advice with respect to the exercise of the functions that the Statute entrusts to Parliament, and
c) the one corresponding to other officials who are required to have a degree."

In the definition of the specific complements, it is established, with regard to the complementary remunerations, *"(...) The jobs of the Parliament, depending on their level of responsibility, technical complexity and command, have been homogenized, without prejudice to the establishment of a list of levels according to the types of officials by reason of the qualification group and professional category and job. These levels range from 3 to 20. Among the civil servants of the A1 group, this specific complement ranges from level 13 to 20. In this group you can find the lawyers, the hearing officer, the linguists, the journalists, the archivists , the treasurer, the architect, and a series of senior technicians from the Parliamentary Administration. In accordance with articles 2 and 12 of the ERGI, in the case of some legal positions, a supplement may be applied to the specific supplement that belongs to the specialized legal advice, command or superior management, and that in the remuneration table they are indicated with the expressions dir (director) and sg (general secretary). Likewise, the position of treasurer has a specific supplement differentiated in attention to the special accounting responsibility to which it is subjected and is indicated with the expression three."*

At the outset, it can be considered that in accordance with the remuneration table published for the year 2022 in the document " *Remuneration regime for personnel serving the Parliament of Catalonia* ", the positions on which access to the information is requested (level 17 onwards) can be considered as having a high remuneration level, as they are the significantly higher positions in the remuneration table approved by the Bureau of the Parliament. We would reach the same conclusion by comparing the corresponding remunerations in the area of the Administration of the Generalitat.

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With regard to the criteria relating to the special responsibility or trust or the fact that these are positions of free appointment, it should be noted that this staff would include, from the start, both the Secretary General, as well as the lawyer/major and the auditor of accounts:

As for the general secretary, article 249 of the Parliament's Regulations establishes *::*

"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 section 2 of the same article, the senior 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 the trust , of a managerial nature or of special responsibility,*** *are determined in the relationship of jobs."*

With regard to the position of senior auditor, according to article 31.1 of the ERGI *: "The Accounts and Treasury Auditor has the following functions:*
a) Prepare the preparatory work and write 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."*

Consequently , given these characteristics, the list with identification of the civil servants who hold or have held the positions of general secretary of Parliament, chief legal officer and auditor of accounts must be provided with an indication of their remuneration, including the three-year terms, during the time period to which the query refers.

With regard to the rest of level 17 civil servants who are lawyers or auditors, insofar as these are positions with a high level of remuneration, it will be necessary to provide access to their remuneration information with identification of the persons, whenever available, in addition, the aforementioned requirements, that is to say that they are command positions or positions of special responsibility within the organization, whose appointment is made by free appointment or by procedures that entail a certain discretion, of in accordance with the provisions of the RLT and the ERGI.

All this unless the hearing procedure provided for in article 31 of LTC results in some circumstance that can justify the limitation of access.

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In any case, the fact that the applicant has the status of a journalist does not introduce a decisive element in this analysis either, given that no elements are provided that, beyond being able to know the remuneration tables of all Parliament staff (already published) justify the need to know the identity of each and every person who occupies positions from level 17 by identifying them. If what we are talking about is controlling the Parliament's actions, this can be done with the aforementioned remuneration tables, without prejudice to being able to know personalized information in the case of the people we have mentioned who, due to the characteristics of their position of work (managerial, of special responsibility, high level of remuneration and trust) are subjected to a higher level of exposure.

V

The issue of whether people who have taken up the age-based license scheme must be identified by name is analyzed below, detailing when they did so (question no. 4).

Regarding the age license, the repealed article 79 of the ERGI 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 agreement of the Table of negotiation 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.
(...)."

With regard to the right to access information on the staff of the Parliament who had taken advantage of the age license and the associated remunerations, this Authority pronounced in the IAIP report 1/2021 where it was to conclude:

"On this issue, and taking into account the considerations that have been made regarding the individualized information on the three years perceived by the officials of the Parliament 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 the their perception, so that, in principle, it does not seem relevant to know the identity of

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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 entail a high level of remuneration."

These criteria are applicable to the case raised in the query that only asks to know the names of the people who have taken advantage of the age license scheme among the civil servants at level 17 and above in respect of whom the request is made.

Taking this into account, it can be considered that the data protection regulations would not prevent facilitating the identification of civil servants have taken advantage of the age license when it comes to the people who hold or have held the positions of secretary general, lawyer, and auditor, and, where appropriate, other lawyers with level 17 and above who hold or have held positions of trust, of special responsibility or of free appointment.

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VI

In the sixth question, it is considered whether in the case of having to deliver public information with personal data, it is correct to indicate in the resolution that access to the information does not enable a public disclosure of this data, arguing that the right to freedom of expression and information is subject to the right to intimacy and privacy.

In response to this question, it must be said that, in general terms and as long as there are no other applicable restrictions or limits, the information obtained in the exercise of the right of access to public information must be able to be used by the people who they access it In the case we are dealing with, the legitimate interest derived from freedom of information (art. 20 EC) can justify this use and even the dissemination of certain data. However, the right to freedom of information is not absolute either.

In the event that the information obtained contains personal data, the subsequent processing of the personal data obtained through the right of access is subject to data protection regulations, as established in article 15.5 of Law 19/2013, of December 9, on transparency, access to public information and good governance, which provides that " *The regulations for the protection of personal data will apply to the subsequent treatment of obtained through the exercise of the right of access"* .

In this sense, the STS should be taken into consideration no. 593/2022 of July 28, issued in Cassation Appeal 67/2021, which includes the weighting criteria in the conflict between the constitutional rights to information and the rights to honor, privacy and self-image. From this sentence it is worth highlighting the consideration that neither of the two rights at stake has a

prevalence over the other and the criteria to be applied in the weighting. Thus the sentence reads:

"In judgments 48/2022, of January 31 and 318/2022, of April 20, we referred to this weighting judgment as:

"[...] the rational and motivated operation of examining the degree of intensity and transcendence with which each of the fundamental rights in collision is affected, with the aim of drawing up a resolutive rule that allows resolving the conflict object of the process, and, in this way, determine which one should prevail, since there are no absolute rights, which must enjoy an unconditional priority in any context of confrontation between their respective cores of legal protection".

In said weighting judgment, we must determine which of the rights in conflict has the greatest weight to be deemed to prevail, insofar as they cannot coexist, in a harmonious way, in the balance of the right. For this, if it is true, as indicated by the recurring part, that, from an abstract axiological point of view, the freedom of information must enjoy a reinforced protection, given the constitutional function that corresponds to it to form public opinion in a democratic state, such circumstance does not imply that we are facing a absolute right to unlimited protection, since all the freedoms recognized in art. 20 CE have their limits, as this precept states, "with respect to the rights recognized in this Title, in the precepts of the laws that develop it and, especially, in the right to honor, to privacy, to one's image and the protection of youth and childhood", which fulfill what the ruling of the Constitutional Court 23/2010, of April 27, FJ 3, has called a "limiting function" in relation to said freedoms. In this sense, the SSTC 12/2012, of January 30, FJ 6; 6/2020, of February 27 [sic], FJ 3; 93/2021, of May 10, FJ 4; as well as the judgments of this Chamber 139/2021, of March 11; 852/2021, of December 9; 48/2022, of January 31 and 318/2022, of April 20, among the most recent.

In short, as highlighted by constitutional jurisprudence, of which SSTC 58/2018, FJ 7 and 25/2019, of February 25, FJ 7 are an expression:
"[...] the freedom of information can be considered to prevail over the rights of personality guaranteed by Article 18.1 EC, not with absolute character but on a case-by-case basis, as long as the information is considered truthful and relevant to the training of public opinion, on matters of general interest, and as long as its content is developed within the framework of the general interest of the matter to which it refers".

But, in the same way, the right to one's image is not an absolute right either, and, therefore, there are legitimate limitations to its expansive force, to which SSTS 691/2019, of 18 December and 887/2021, of December 21, because, as stated in STC 139/2001, of June 19 [sic], FJ 5, "[...] it cannot be deduced from art. 18 CE that the right to one's own image, as limited to the work of others, includes the unconditional and unreserved right to remain anonymous"

(...)

Well, that being the case, it turns out that freedom of information can come to be considered prevalent over the rights of personality guaranteed by article 18.1 EC, not with absolute character but case by case, according to these three evaluative guidelines: A) that the information communicated is related to a matter of general interest or public

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relevance, either because of the matter, because of the people or because of both; B) proportionality; that is, that unequivocally insulting or vexatious expressions are not used; and C), lastly, but not least, that of veracity, which is a legitimizing requirement of freedom of information (sentences 252/2019, of May 7; 26/2021, of January 25; 852 /2021, of December 9 and 48/2022, of January 31, among others). (FD TERCER)

Consequently, when providing journalists with information that contains personal data, it is appropriate to warn in the resolution that the subsequent processing of the information will be subject to data protection regulations. On the other hand, it is not appropriate to indicate in the resolution that access to information does not enable public disclosure of this data in any case, arguing that the right to freedom of expression and information is subject to the right to intimacy and privacy, since, as jurisprudential doctrine states, these are two fundamental rights that will require a case-by-case assessment.

VII

Finally, he asks if " *the information given can be limited to the last five fiscal years or if the administration has the information and has not destroyed it, it must hand it over since 2008, as usual. bid the journalist?"*

Without prejudice to the fact that for the purposes of active advertising a publication period of five years may have been established, the right of access to public information is not limited in time.

However, article 24.2 of the LTC establishes that the elapsed time is one of the elements to be taken into consideration in the previous reasoned weighing of the public interest in the disclosure and the rights of the affected persons.

From the point of view of data protection regulations, the fact that information has been requested since 2008 has implications to the extent that it will affect not only the people who currently hold the jobs on which Request information but to all those who have occupied them since 2008.

In addition, with respect to those who occupy the positions at present and who have been occupying them for a long period of time, it allows to obtain a more complete profile by offering an image of their economic capacity over time.

However, in this case the temporal scope of the information is not, in principle, an element that should restrict the right of access.

In fact, for people who no longer hold these jobs, the passage of time means that the impact on the right to data protection is less, since generally the passage of time weakens the effects of diffusion of the personal information of those affected. And with regard to the people who have been occupying one of these positions for a long period of time, although it is true that it is more intrusive, we must not forget that the publication of the remuneration tables, together with the relevance of his appointment, it would also allow obtaining a certain profile (although perhaps not entirely accurate) of his economic capacity, so the consequences would not be significant.

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conclusion

1. To determine that we are dealing with positions of special responsibility, we must attend to the uniqueness of the workplace based on the functions attributed to it, the hierarchical dependence, the command functions it has, its form of provision, etc., in accordance with the public service regulations and the configuration of the workplace made by the corresponding public entity.

To determine whether a job has a high level of remuneration, the remuneration established for the different jobs within the public entity where it is located must be taken into consideration.

In any case, in the weighting provided for in article 24.2 of LTC, both circumstances must be assessed together and not in isolation.

2. In response to questions 3, 4 and 5, the data protection regulations would not prevent access to the remuneration received and the situation of having requested or having the so-called age license with respect to the officials of the Parliament who occupy positions of lawyer or comptroller when they occupy the positions of general secretary, senior lawyer, auditor or in respect of those who hold positions of trust, of special responsibility or of free appointment in the organization.

3. From the point of view of data protection regulations, the resolution recognizing the journalist's right of access must warn that the subsequent treatment of the information obtained must respect data protection regulations, but this it does not exclude that freedom of information may protect the dissemination of certain information.

4 . The right of access to information is not limited in time. In the case at hand, the degree of interference for the people affected tends to be lower if it refers to periods that go beyond the last five years.

Barcelona, October 20, 2022

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