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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 against the refusal by a City Council of the request for access by a trade union section to information on personnel and training since January 1, 2019

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 submitted in relation to the refusal by a City Council of the request of access by a trade union section to information on personnel and training since January 1, 2019.

Having analyzed the request, which is accompanied by a copy of the file of the claim submitted, in accordance with the report of the Legal Counsel, the following is reported:

Background

1. On November 19, 2021, a trade union section presents to the City Council a request for access to public information in which it requests copies of the resolutions and access to the files, from the 1 January 2019, referring to:

"- appointments of interim civil servants and career civil servants - Provisional assignments, assignment of functions, assignment of functions, commission of services - financial complementation of Provisional Assignments, assignment of functions, assignment of functions, commission of services. – Organizational changes, organizational chart approval – cost breakdowns of collective and individual training actions – Approval of bases"

2. On December 14, 2021, the City Council rejects the access request considering that, due to the amount of documentation, in which a large number of people, obtaining, extracting or disposing of the requested information involves an unacceptable and disproportionate workload to the extent that it comes from different files, sources of information, databases and files, which cannot be prepared .

3. On December 27, 2021, the trade union section presents to the GAIP a claim based on which it requests the documentation "[...] relating since January 2019 to the appointments of interim and career staff, as well as provisional assignments, assignments of functions and their financial additions. We have also requested information regarding training, broken down between individual and collective and its costs also broken down."

The trade union section explains that it is necessary information for its activity of representing the workers.

4. On January 7, 2022, the GAIP sends the claim to the City Council and requests a report setting out the factual background and the foundations of its position in relation to the

claim, as well as the complete file and, where appropriate, specifying the third parties affected by the claimed access.

5. On January 28, 2022, the City Council sends GAIP, among other documents, a report in which it states that admitting the request for access would block the normal operation of the council. The City Council refers both to the large volume of information requested and to the fact that there are a large number of people affected, who should be given a transfer of the request so that they can submit allegations.

On the other hand, in relation to the information relating to the breakdown of expenses for collective and individual training actions, the City Council states that it is preparing the report of the trainings completed in 2021 and, once this task is completed, it will provide it to the trade union section, as it states, as it has done every year.

In short, the City Council supports the denial of access on the grounds that the requested information entails a complex task of elaboration.

He also adds that the union section's claim of access must not be conveyed through the transparency regulations, but through the mechanisms granted by the Basic Statute of the Public Employee and the freedom regulations trade union

6. On February 4, 2022, the GAIP will send the City Council's legal report to the union section to present allegations.

7. On February 14, 2022, the trade union section presents a statement of objections in which it states that insofar as the information requested does not affect personal data of a nature tax, patrimonial, related to the municipal register or health, access must not be restricted. He considers that the regulations applicable to his request are the transparency regulations.

8. On February 25, 2021, the GAIP forwards the union section's allegations to the City Council.

9. On March 4, 2022, a new report from the City Council was registered in the GAIP in which, in response to the allegations of the union section, is ratified on the grounds set out in the report presented to the GAIP on January 28, 2022.

However, in particular the City Council refers to the categories of data affected, stating that it does not only cover identifying data, but that there are other categories of data affected such as details of professional employment, academic, economic and financial data or well relating to health (prevention of occupational risks). In the same report, the City Council provides an extract from the record of processing activities published on its website, in particular the processing carried out by the corporation's Organization, People and Innovation Service.

The City Council declares that the requested information has been regularly provided to the trade union section, in accordance with the provisions of the regulations. Notwithstanding this, with regard to the information relating to the costs of the training actions, the City Council provides a link to the portal of

transparency in which the trade union section can view the settlement of the City Council's budget from previous years.

Finally, the City Council informs that it has communicated to the union section the possibility of being able to examine all the information it requests or considers appropriate.

10. On March 16, 2022, the GAIP requests a report from this Authority, in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to information public and good government.

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 request a report from the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (art. 4.1 of Regulation 2016/679, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and by which Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

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

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

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

II

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

Article 4.2) of the RGPD considers *"treatment": 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, deletion or destruction"*.

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment *"is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"*.

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data can only be considered based on this legal basis of article 6.1. c) of the RGPD when so established by a rule with the rank of law.

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

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

of December, on transparency, access to public information and good governance (hereinafter, LT), in its articles 12 (right of access to public information) and 13 (public information).

In the case at hand, it must be taken into account that access to information relating to the institutional organization and administrative structure, as well as economic, accounting and budgetary management of the City Council from January 1, 2019, which is information that must be considered public for the purposes of article 2.b) of the LTC, and subject to the right of access (article 18 of the LTC), being information in their possession as a result of the exercise of their powers.

However, it is necessary to take into account the provision of the first additional provision of the LTC which provides, in the second section, that *"access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law"*.

The union section requests the City Council to access public information on the basis of the provisions of the union, labor and civil service regulations, and the LTC. Therefore, in accordance with the provisions of the first additional provision of the LTC, it is necessary to analyze whether through the trade union, labor and civil service regulations, and additionally the LTC, the trade union section would be empowered to access said information.

III

At the outset, before the analysis of the substantive issue, it is appropriate to address certain issues that affect the information that is the subject of the claim.

According to the information sent, with the request for access presented to the City Council, it was intended to obtain a copy of the resolutions and access to the files, from January 1, 2019, relating to *"- staff appointments interim civil servant and career civil servant – Provisional assignments, assignment of duties, assignment of duties, commission of services – financial complementation of Provisional Assignments, assignments of functions, assignment of functions, commission of services. – Organizational changes, organizational chart approval – costs broken down for collective and individual actions – Approval of bases"*

However, the claim presented to the GAIP only refers to the information *"[...] relating since January 2019 to the appointments of interim and career civil servants, as well as provisional assignments, assignments of functions and their financial supplements . We have also requested information regarding training, broken down between individual and collective and its costs also broken down."*

The claim presented to the GAIP does not refer to all the information requested from the City Council. In particular, the claim only refers to the information relating to the appointments of interim and career personnel; provisional assignments, assignments of functions and their financial additions; and information related to training.

For this reason, this report will focus only on those matters included in the complaint.

Finally, it should also be borne in mind that the application presented to the City Council expressly refers to the fact that the information relating to appointments is limited to interim and career civil servants. Although in the other aspects this concretization is not carried out, it is understood for the purposes of issuing this report that with respect to the rest of the matters included in the application (provisional assignments, assignments of functions, financial supplements and training) they also refer to interim and career civil servants. This is without prejudice to the fact that, with the exception of some of the provisions relating to the specific regime of access to information by the representatives of civil servants, the considerations contained in this report may also be extrapolated to working personnel.

IV

The request is made by a trade union section. This circumstance may be relevant for the purpose of carrying out the analysis of the case at hand to the extent that the rights recognized to unions, or union sections may be different from those corresponding to union delegates and representatives of workers or staff .

In relation to this issue, article 8 of Organic Law 11/1985, of August 2, on Freedom of Association (LOLS) recognizes the right of workers affiliated to a union to set up union sections in accordance with what they establish the statuses of the union to which they belong.

The second section of this article provides that, without prejudice to what may be established in the collective agreement, the union sections of the most representative unions and those that have representation in the works committees and in the representative bodies that establish the public administrations, or have staff delegates, have rights related to the dissemination of information relating to working conditions, collective bargaining and the use of premises when the company or workplace has more than 250 workers.

On the other hand, article 10.3.1 of the LOLS grants union delegates the same guarantees legally established for members of company committees or representative bodies established by public administrations and, in relation to what interests us in in this case, it recognizes the right to:

"1.º To have access to the same information and documentation that the company makes available to the works committee, union delegates being obliged to keep professional secrecy in those matters in which they legally proceed."

In the case at hand, although the requests for access and the complaint to the GAIP have been submitted by the trade union section, the fact that the person representing the trade union section has the status of a trade union representative may be relevant . It should be noted, however, that the information sent does not indicate that the person representing the trade union section holds the position of trade union representative of the City Council.

In any case, the possibility of accessing the requested information is analyzed below from the perspective of the right to information that corresponds to the trade union delegates.

As we have seen, article 10.3 of the LOLS recognizes them as equal, in terms of access to information and documentation, to members of the company committee or representative bodies in public administrations, in the cases that are not part of these representative bodies.

The analysis of the request for access made by a union delegate, or by those who are part of the specific bodies representing the staff, in accordance with the first additional provision of the LTC, requires taking into account the regime of access to information established by Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee (hereafter EBEP). And this without prejudice to the fact that the provisions of the transparency regulations must additionally be taken into account.

These rules attribute to the boards or staff delegates (art. 39 EBEP), as specific bodies representing civil servants, certain functions for the exercise of which they are recognized as having the right to access certain information, which could include data personnel of the workers.

At the same time, it is also necessary to take into account the provisions of article 38 of the EBEP, from which the possibility of concluding pacts and agreements is reserved or of establishing by collective agreement, respectively, specific provisions that affect the conditions of work, including the content and modalities of the exercise of the rights of information and consultation of the representative bodies of workers or staff.

Article 40.1.a) of the EBEP provides that the Personnel Boards and personnel delegates must receive information on the personnel policy, as well as data relating to the evolution of remuneration, probable evolution of the employment in the corresponding field, and on performance improvement programs.

The Agreement on Working Conditions for City Council officials expands the provisions of the EBEP in the sense of, among other things, recognizing the Personnel Board's participation in the development of training policies (art. 14) as well as, with regard to the training board, the participation of social representation in the preparation, evaluation and monitoring of the training plan (art. 15).

Without prejudice to the fact that on the basis of these forecasts, with regard to civil servants, although it cannot be ruled out that the trade union delegates - in relation to what is provided for in art. 10.3 of the LOLS can access certain information about the selective processes or the provision of jobs, or information related to training, it does not seem that this possibility is available in the terms requested in the case at hand.

Therefore, the analysis of the claim must be carried out in accordance with the provisions of the transparency regulations.

v

Without prejudice to what has just been explained from the point of view of the specific regulations applicable to trade union delegates, it is additionally necessary to analyze whether the requested information can be accessed based on the transparency regulations.

It should be noted that the claim aims to access information relating to copies of the resolution and files, from January 1, 2019, relating to the appointments of interim civil servants and career civil servants; provisional assignments and assignments of functions, and the complements economic; as well as information related to collective and individual training actions.

Given the nature of the information requested, from the point of view of the limits to data protection provided for in the transparency regulations, it cannot be ruled out that there may be specially protected data in the terms provided for in article 23 of the LTC, such as data relating to health, as would be the case if the documentation sought to be accessed contains information related to a disability, or the results of psychotechnical tests. In the event that there is information of this type, or any other of those provided for in article 23 of the LTC - in addition to those relating to health, data relating to ideology, trade union affiliation, religion, beliefs, racial origin, sexual life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender - and lack of express consent of the holder by means of a written , or the information has been made manifestly public by the affected person in the event that it refers to ideology, trade union affiliation, religion or beliefs (art. 15.1 of the LT), access should be limited.

Beyond the specially protected data referred to in Article 23 of the LTC, the analysis must be carried out based on the provisions of Article 24 of the LTC, which provides the following :

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

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

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

Considering that the access request affects different types of public information, the analysis will be carried out individually for each of them.

VI

Regarding the request for access to information regarding the copies of the resolutions and access to the files, from January 1, 2019, relating to the appointments of temporary civil servants and career civil servants, as well as the provision of jobs through provisional assignment and assignments of functions, including in any case the bases of the call, the analysis must be based on what is foreseen by the EBEP.

The EBEP establishes that personnel selection processes in the field of public administrations are subject to a series of principles, among which it is worth highlighting those of publicity and transparency (article 55.2.a) ib)). And, with regard to the provision of jobs, it states that they must be provided through procedures based, among others, on the principle of publicity (article 78 EBEP).

Article 10.1.b) of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia, establishes that information must be disseminated by electronic media on access and staff selection.

At the local level, article 286 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC) provides in terms similar to the 'EBEP that access to the status of career official or labor personnel of local corporations must be done in accordance with the public offer of employment, through a public call and compliance must be guaranteed of the constitutional principles of equality, merit and capacity, as well as the announcement of calls must be published in the BOP and the DOGC.

For its part, Decree 214/1990, of 30 July, which approves the Regulation of personnel in the service of local entities (RPEL), regulates the different access procedures for personnel of local administrations and, for this purpose, it contains provisions relating to the publication of notices of calls, the bases, etc.

The Decree also provides for different provisions relating to the publication of the administrative acts carried out during the procedures, such as with respect to those of selection, the need for the publication of the list of admitted and excluded (art. 78); the list of those approved by score order (art. 80); the appointments of civil servants, to the BOP (art. 82 and 84), etc., or, with regard to the provision of jobs, the need to publish the score and proposed resolution of the applicants' merit competition (art. 118.3).

From the point of view of the transparency regulations, reference must be made to article 9.1.e) of the LTC, which provides that the Administration must make public the call and the result of the selective processes for the provision and promotion of the staff

In relation to this information, article 21 of Decree 8/2021, of February 9, on transparency and the right of access to public information (from now on, RLTC), which develops article 9.1 .e) of the LTC, foresees that the calls for proposals and the results of:

"[...]

- a) Access procedures to the bodies and scales of statutory civil servants and labor personnel.*
- b) Internal promotion procedures.*

- c) *Provisional and definitive provision procedures.*
- d) *Procedures for the selection of temporary staff or temporary workers, including temporary staff exchanges.*
- e) *Scholarships and grants for providing services.*
- f) *Intern recruitment offers.*

2. The data to be published must refer, at least, to the announcement of the call, the bases, the official announcements and the first and last names and the four numbers of the national identity document or equivalent document of the persons admitted in each test or exercise of the process and of the person finally selected, in accordance with the criteria established in the field of data protection.

[...].”

It should be noted that this does not only include the result of selective and definitive provision processes but also provisional provision processes such as situations of secondment of functions, assignment of functions or commission of services, to which the sole refers request This may also include information on the duration of the provisional provision situation.

To this end, it should be noted that the seventh additional provision (DA7) of the LOPDGDD states the following:

“1. When it is necessary to publish an administrative act that contains personal data of the person affected, it will be identified by means of his name and surname, adding four random numerical digits from the national identity document, foreigner's identity number, passport or equivalent document. When the publication refers to a plurality of those affected, these random figures must be alternated.

When it comes to notification through announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, the affected person will be identified exclusively through the full number of your national identity document, foreign identity number, passport or equivalent document.

When the affected person lacks any of the documents mentioned in the two previous paragraphs, the affected person will be identified solely by means of their number and last name. In no case should the number and surname be published together with the full number of the national identity document, foreign identity number, passport or equivalent document.

2. In order to prevent risks for victims of gender-based violence, the Government will encourage the development of a collaboration protocol that defines safe procedures for the publication and notification of administrative acts, with the participation of the bodies with competence in the matter.”

Based on everything that has been presented, it follows that both the transparency regulations and the local regime regulations provide for different advertising obligations in relation to the selective processes of provision and promotion of personnel. To the extent that the regulations themselves provide for the need to publish certain information that affects personal data related to the different administrative acts of the processes, in principle it does not seem that the regulations of

protection of personal data may prevent access to this information contained in the files.

However, please note that the file will contain information such as contact details, training and professional data, tests and interviews carried out etc. that if they are provided through the right of access, it may lead to an interference with the right to data protection that goes further than that derived from the publication during the selective process of the information provided for in the examined regulations.

From the point of view of the data protection regulations, the analysis on access to this information must go through a prior reasoned weighting between the public interest in the disclosure and the right of the persons affected (art. 24.2 of the LTC). In this weighting it is necessary to take into account all the circumstances that affect each specific case with the aim of determining whether the claimant's right of access or the data protection right of the affected persons should prevail, taking as based on the different elements listed in the aforementioned article.

For this purpose, article 24.2.b) of the LTC provides that one of the elements that can be considered is the purpose of the requested access. Although article 18.2 of the LTC provides that the exercise of the right of access is not conditional on the concurrence of a personal interest, and is not subject to motivation nor does it require the invocation of any rule, knowing the motivation for which the person claiming wants to obtain the information may be a relevant element to take into account in the weighting.

In the case at hand, the claim states that the requested information is necessary for their activity as staff representatives, given the rights and interests recognized by current regulations. Thus, it is understood that it refers to the function of surveillance and control of legality.

In general, it is clear that knowing this information would allow the trade union representative to verify the legality of the selection or provision procedures carried out by the corporation, such as, that the principle of equality, merit and capacity is fulfilled. At the same time, this purpose would be in line with the objective of the transparency regulations, that is to say, *"to establish a system of relationship between the people and the public administration and the other obliged subjects, based on the knowledge of the public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of accountability and responsibility in public management"* (article 1.2 LTC), or in other terms, establish the possibility of offering citizens tools for monitoring the performance of public authorities.

From the point of view of the selected persons, providing information on the score obtained may be justified in order to be able to know the conditions under which the affected person has accessed their workplace, making a comparison with the rest of the applicants, and without this implying revealing information such as the exercises carried out or the specific facts that have been assessed as merit.

On the other hand, with regard to non-selected persons, providing information such as their identity, about the scores obtained or the merit score, does not seem to be relevant when carrying out the control of the administrative action. Well, beyond the jurisdictional control that the affected people themselves have been able to exercise, control by the general public, or by the trade union representative who exercises the right of access, can also be achieved through anonymized information. On the other hand, the interference in the right to data protection, or the

consequences of the knowledge of this information in the private life of the people affected, can always be higher for the people who have not passed the process, than for the selected people, given that what it shows is that they participated in that process (a circumstance that in principle does not need to be known in their social or work sphere), and that they did not pass the process.

This without prejudice to the fact that, as this Authority has already admitted in other reports (IAI 18/2021 and IAI 20/2021), in the case that it is a trade union representative of an organization that has the status of a trade union organization more representative, the documentation linked to the content of the tests carried out, the supporting documentation of the alleged merits and the score obtained, given the legitimacy recognized by article 31.6 of the EBEP, can also be provided.

For this reason, it must be considered that in the particular case the right to data protection does not prevent the provision of information relating to the announcement of the call, the bases, and the scores obtained by the selected persons contained in the files affected by the request for access, and the date of his appointment, to the extent that this information may allow the trade union representative to exercise control over the actions of the administration derived from the procedures for selection and provision of jobs, without but to access contact, training and professional information or other information such as the exercises carried out, the interviews or the specific facts that have been assessed as merit, unless it is a delegate of a trade union organization that has the condition of being more representative. On the other hand, access to information about the rest of the participants in the call is not justified, so it should be provided anonymously.

VII

Regarding the requested information that affects the remuneration system, in particular the financial supplements of the jobs provided through provisional assignments and assignments of functions, it is necessary to start from the provision of article 74 of the EBEP, according to which the public administrations must structure, and make public, their organization through workplace relations or other similar organizational instruments that include, at least, the name of the positions, professional classification groups, bodies or scales, if applicable, to which they are attached, the provision systems and the complementary remunerations.

At the local level, the RPEL establishes in article 30.2.d) that for each job, in the list of jobs, it must be indicated, at least and among others, *"the complement of assigned destination and its organic level, as well as, if applicable, the corresponding specific complement"*.

On the other hand, from the point of view of the transparency regulations, article 11.e) of the LTC provides that the Administration must publish the general information on the remunerations, compensations and allowances received by public employees, grouped depending on the levels and the bodies. And, article 25.1.a) of the RLTC, defines remuneration as *"the economic compensation that can be received for the work carried out"*, and to this effect, provides that *"the overall gross annual remuneration must be made public 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 staff in the service of the public administrations must be published, with an indication of the basic remuneration"*.

the complementary ones, in the case of civil servants, and with an indication of the basic remuneration, seniority supplement, extraordinary payments and other specific supplements and bonuses according to the agreement or outside of the agreement, in the case of labor personnel.”

On the basis of these articles, and taken to the case at hand, it follows that the information requested relative to the financial supplements of the jobs provided through secondment provisional, assignment of functions or commission of services should be accessible through the list of jobs and the information grouped by bodies and levels that the administration must make public in accordance with the regime of active advertising that provides for the transparency regulations.

This information can obviously be related to physical persons to the extent that the regulations provide for the need to advertise, in accordance with what has been analyzed in the previous legal basis, certain information relating to the selection and provision of positions of work by the staff in the service of the public administration.

For this reason, access to the requested information that affects the remuneration system also requires analysis through the weighting referred to in article 24.2 of the LTC, between the public interest in disclosure and the rights of the people affected.

It does not seem that a priori the right to data protection of the persons affected by the access request should prevail over the public interest in the disclosure of this information by different reasons

First of all because, in accordance with what has been analyzed previously, the information relating to jobs, which must include, among other information, supplementary remuneration, is subject to the active advertising regime provided for in the transparency regulations, notwithstanding that it does not have to include personal data.

On the other hand, as has been explained, the regulations provide for the need to advertise the appointment of staff, in which the job to which they are assigned is identified and which may incorporate other information related to the characteristics of the position (group, level, category, add-ons...), or this information can be obtained through the list of jobs.

Therefore, there is a reasonable probability that, based on active advertising obligations, the remunerative information associated with a site can already be linked, even if indirectly, to a specific person.

One of the circumstances that can be taken into account in the weighting, in accordance with what has been explained above, is the purpose of the access. In the particular case, it seems that the purpose corresponds to the need of the trade union representative to exercise the function of monitoring and control of legality, which purpose can obviously justify access to this information to verify, for example, that the remuneration supplements conform to the regulations that regulate the remuneration regime for local government officials.

In addition, this purpose would not be opposed to what the transparency regulations pursue, that is, the control by citizens of certain aspects of the activity of the administrations.

Regarding the intrusion into the right to data protection of the people affected, it is clear that access to this information can affect not only their professional or work sphere, even the strictly personal or the 'patrimonial sphere, to the extent that it allows recognizing not only data relating to your occupation but also others that may affect your private life more directly such as the approximate level of income from your work. However, in line with what has been analyzed up to this point in relation to the regime of active advertising, it does not seem that in the case in question there are circumstances from which it can be considered that the interference with the right to data protection, when communicating this information to the trade union representative, is superior or exacerbates that caused by the application of the active advertising regime.

In short, in the case at hand, it would not seem justified to deny the intended access to the remunerative supplements relative to the jobs provided through the provisional assignment, assignment of functions and commission of services from January 1, 2019, insofar as the provisions relating to the advertising of the list of jobs and that which affects calls and staff selection processes, already allow consideration that there is a reasonable probability of relating all this information to the affected workers. In any case, this would not include the specific remuneration received by each person, but the remuneration information associated with the jobs covered through these forms of provisional provision.

VIII

The trade union representative also requests access to information on training, including the breakdown of costs for collective and individual training actions. The analysis on access to this information must go through the weighting referred to in article 24.2 of the LTC.

It should be borne in mind that, in terms of transparency, article 9.1.g) of the LTC provides that the administrations must make public the lists that are eventually created to access the training and promotion processes. In relation to this, article 22 of the RLTC establishes the following:

"1. [...] is understood by lists that are eventually created to access the training and promotion processes, lists that contain personnel in the service of public administrations admitted to non-compulsory training activities and directly related to internal promotion, economic or professional, organized by each of the public administrations.

2. For these purposes, the lists must publish the data relating to the identification of the names and surnames of the persons admitted, the workplace they occupy and the organic unit in which they are integrated, the unit that manages the activity and a description of the training activity, which must include its code, year and start and end dates.

3. The information must be published on the Transparency Portal of Catalonia on the start date of the training activity, and must remain there for a period of two months from the end date of the activity training."

It is clear that during the period referred to in article 22.3 of the RLTC, if any citizen can access this information, with more reason a trade union representative should be able to access it.

However, according to section 3 of article 22 of the RLTC, this information must be public from the start date of the training activity, and must remain published for up to two months from the date of completion of the training activity. Therefore, in the case at hand, providing this information through the right of access may lead to an interference with the right to data protection that is greater than that resulting from publication within this period, given that the information is must maintain the transparency portal during the period from the start date of the training activity up to two months from the date of completion of the training activity.

In any case, access to this information would make it possible to carry out the control function referred to in the transparency regulations in relation to public funds that are allocated to training and, from the perspective of working conditions, also contribute to ensure the effectiveness of the staff's right to receive training, without any discriminatory situation occurring.

From the perspective of the people affected, it is clear that this information involves an interference with the right to data protection, to the extent that it reveals academic information. However, without prejudice to the fact that the access involves the dissemination of attendance at a certain training, it is considered that a priori this information should not significantly harm your rights.

In short, in the case of non-mandatory reception training activities directly related to internal, economic or professional promotion, it does not seem that from the perspective of personal data protection there should be an impediment to accessing the information regarding in the lists of admitted personnel where the identification of the names and surnames of the admitted persons, the workplace they occupy and the organic unit in which they are integrated, etc. is stated. (art. 22.2 of the LRTLC)

Another issue that must be taken into account, with respect to what is provided for in article 22 of the LRTLC, is that the active advertising regime only operates in relation to non-mandatory training activities that are directly related to internal promotion, economic or professional, and that is organized by the public administration. In other words, training activities that are not organized by the public administration are excluded.

However, it does not seem that in this case the conclusion should be different with regard to the right of access given the functions of the trade union representative, the possibility of monitoring the use of public resources and the fact that the interference for the people affected it would be no different than in the case of courses organized by the administration itself and related to internal, economic or professional promotion.

conclusion

Data protection regulations do not prevent access to information relating to:

-The call, the bases, and the scores obtained by the selected people that appear in the files affected by the access request, and the date of their appointment.

Likewise, they can also have access to the list of people who have been in a secondment situation of functions, assignment of functions or commission of services. In the case of a delegate

of a union organization that has the condition of being more representative, can also access the documentation linked to the content of the tests carried out, the supporting documentation of the alleged merits and the score obtained.

- The information relating to the financial supplements of the jobs provided by the system of provisional assignment or assignment of functions.
- List of staff admitted to the training activities organized or financed by the City Council, including the expenditure assumed by the City Council.

Barcelona, April 7, 2022

Machine Translated