

IAI 11/2022

**Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim presented by a trade union section against a city council for the denial of access to information on personnel matters**

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 by a citizen, in relation to the denial of access to the information on the relationship of technical service jobs with the descriptive files and identification of the people who occupy them or if they are vacant. In the case of positions occupied on an interim or temporary basis, duration of the interim or temporary relationship of each person with the city council.

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

**Background**

1. On September 16, 2021, the representation of the CCOO Union section of the City Council presents a letter to the City Council, in which it requests information on whether the descriptive sheets that the Corporation delivered to it on the 13 September 2021 are all the descriptive files of the Technical Services staff, the organization chart of the Technical Services of the City Council and, finally, relate the Technical Services jobs of the RLT of Technical Services with the descriptive files and identify the people who occupy them or if they are vacant.

2. On January 12, 2022, the City Council responds to the request, in the following sense:

"In response to the instance presented on September 16, 2021 (RE E/19154), in which you request confirmation of whether the descriptive files of Technical Services personnel that have been transferred to you are the current ones, confirm which are effectively the current ones.

Regarding the request for the Technical Services Organization Chart, there is currently no partial organization chart for each service, but a general organization chart.

With regard to the request you make in order to link each of the Technical Services jobs with the files and identify the people who occupy them or if they are vacant, we consider that it is not the object of this service, agree with the principle of protection of personal data, transfer this data if this is the case."

3. On January 24, 2022, the trade union section of the City Council filed a complaint with the Commission for the Guarantee of the Right of Access to Public Information (GAIP), alleging that it has received

response from the City Council but that they have not given him the information and that therefore he has not been able to access the information he requests, for the development of union activity. In particular, it requests:

"List of Technical Services jobs with their descriptive sheets and identification of the people who occupy them or if they are vacant. In the case of positions occupied on an interim or temporary basis, duration of the interim or temporary relationship of each person with the city council.

Confirmation that the descriptive sheets that were delivered are ALL the descriptive sheets for the Technical Services jobs."

4. On January 27, 2022, the GAIP sends the claim to the City Council, requesting a report with the City Council's position regarding the claim, the complete file relating to the claim, and the identification of the third parties who are affected by the access that is claimed, if any. The GAIP reiterates to the City Council the request for information on February 22, 2022, without the submission of the City Council report being recorded in the file, nor the identification of third parties affected.

5. On March 17, 2022, the Commission for Guaranteeing the Right of Access to Public Information (GAIP) requests from the Catalan Data Protection Authority the report provided for in article 42.8 of the Law 19/2014 of December 29, on transparency, access to public information and good governance.

#### **Legal Foundations**

##### **I**

In accordance with article 1 of Law 32/2010, of October 1, the Catalan Data Protection Authority (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 (Article 4.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27 (hereinafter, RGPD)).

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

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

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 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

From the claim presented, three requests are extracted. Specifically, it requests:

1. *"List of Technical Services jobs with their descriptive files and identification of the people who occupy them or if they are vacant".*
2. *"In the case of positions occupied on an interim or temporary basis, duration of the interim or temporary relationship of each with the city council."*
3. *"Confirmation that the descriptive files that were delivered are ALL the files job descriptions of Technical Services."*

In advance, it must be said that the third request is outside the scope of this report, it does not contain any other personal information than that which can be included in the descriptive files themselves.

It is clear from the claim that the claimant wants access to the identification with names and surnames of each of the municipal workers who occupy different jobs, as well as to know which positions are vacant and in the case of the positions occupied by interim or temporary, to know the duration of the relationship.

The data of City Council workers, whether they are labor, career or interim, or temporary, that identify them or that allow their identification, as well as that information referring to the job they occupy, but that is linked to the specific worker that occupies it, are personal data subject to data protection regulations (RGPD and Organic Law 3/2018, of December 5 Protection of Personal Data and guarantee of procedural rights (hereafter LOPDGDD)).

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

The information and documentation relating to the data of City Council employees is "public information" for the purposes of article 2.b) of the LTC, subject to the access regime provided for in this regulation that establishes, as general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (art. 20 et seq.).

It is necessary to take into account, however, 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".*

In the case we are dealing with, the person requesting the information is a trade union section. 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

Article 8 of Organic Law 11/1985, of August 2, on Trade Union Freedom (LOLS) recognizes the right of workers affiliated to a trade union to set up trade union sections in accordance with what is established in the statutes of the trade union to which they belong

The second section of this article provides that, without prejudice to what the collective agreement may establish, 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 disclosure of information relating to working conditions, collective bargaining and the use of premises when the company or work center has more than 250 workers.

With regard to the right to information, the LOLS collects it in relation to trade union delegates, and not with respect to trade unions or trade union sections.

In relation to this matter, article 10.3.1 of the LOLS recognizes for trade union delegates the same guarantees legally established for members of company committees or representative bodies established by public administrations and, in relation to what we interested in this case, 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."*

Consequently, in general, the union section would not have the rights recognized by the LOLS in article 10.3 of the LOLS, being exclusive to the union delegates, regardless of whether they are part of the works committee.

In the case at hand, although the requests for access and the claim to the GAIP have been submitted by the trade union section, the fact of the person representing the trade union section may be relevant for the purposes of what is provided for in article 10.3 of the LOLS.

It should be noted, however, from the information sent, that it does not appear that the person representative of the trade union section holding the position of trade union representative of the City Council.

In the event that the person who exercises the right of access to public information, representing the trade union section, has the position of trade union delegate, it is necessary to take into account the provision of article 10.3 of the LOLS by which delegates are recognized equalization, in terms of access to information

and in the documentation, to the members of the company committee or of the representative bodies in the public administrations.

If this is the case, it will be necessary to take into account the information access regime established by Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of public employee (hereinafter EBEP) as well as by the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 5/2015, of October 23 (hereinafter, ET). 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 well as to the staff delegates or Company Committee (art. 62 and 63 ET), as specific bodies representing civil servants and public workers with employment contract respectively, certain functions for the exercise of which it recognizes the right to access certain information, which could include personal data of the workers.

At the same time, it is also necessary to take into account the provisions of articles 38 of the EBEP and 64.9 of the ET, from which the possibility of concluding pacts and agreements is reserved or establishing by collective agreement, respectively, specific provisions that affect working conditions, including the content and modalities of the exercise of the rights of information and consultation of the bodies representing 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.

For its part, article 64.1 of the ET provides that *"the works committee shall have the right to be informed and consulted by the employer on those issues that may affect the workers, as well as on the situation of the company and the evolution of employment in it, in the terms provided for in this article"*. And, he adds that information is understood as *"the transmission of data by the employer to the company committee, so that it is aware of a certain issue and can proceed to its examination (...)"*.

Next, sections 2 to 5 of this article 64 of the ET contain specific provisions in relation to the issues or matters on which the works councils have the right to receive information. In particular, in the case at hand, we are interested in highlighting the following subjects:

*"2. The company committee will have the right to be informed quarterly:*

*[...]*

*c) On the employer's plans to conclude new contracts, indicating the number of these and the modalities and types that will be used, including part-time contracts, the performance of additional hours by part-time workers and the subcontracting cases.*

*[...]*

*Likewise, the works committee will have the right to receive the basic copy of the contracts, as well as the notification of the extensions and of the corresponding complaints within ten days of their occurrence*

*5. The works committee will have the right to be informed and consulted about the situation and structure of employment in the company or in the workplace, as well as to be informed quarterly about the likely evolution thereof, including consultation when changes are foreseen about it*

*Likewise, you will have the right to be informed and consulted about all the decisions of the company that could cause relevant changes regarding the organization of work and the work contracts in the company. You will also have the right to be informed and consulted about the adoption of any preventive measures, especially in case of risk to employment.*

[...]"

All this for the purpose of exercising, among others, the function of "monitoring compliance with the current labor, social security and employment standards, as well as the rest of the agreements, conditions and company practices in force, formulating, in his case, the appropriate legal actions before the employer and the competent bodies or courts" (article 64.7.1.a) ET).

Therefore, in accordance with this regulation, the union delegates would have the right to receive information regarding the employment policy and the evolution of the recruitment of personnel and this would include both the provision of official or labor positions that are has done or is expected to do, but it would not include personal information of the affected workers, except, as far as labor personnel are concerned, the right to obtain a basic copy of the labor contracts that are formalized.

For this reason, it will be necessary to see if, in accordance with the transparency regulations, he could have access to the rest of the requested information.

#### IV

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1). The mentioned article 2.b) defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law".

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

In accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically with regard to information containing personal data, it is necessary to assess whether the right to data protection of the affected persons would justify or not the limitation of the right of access to public information invoked by the claimant.

Articles 23 and 24 of the LTC regulate the limits on access to public information when the information which you want to access contains personal data.

According to article 23 of the LTC:

"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sexual life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents by means of a written which must accompany the application."

Regarding data that is not considered specially protected, article 24 of the LTC provides:

*"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 constitutional rights protected*

*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.*
- (...)."*

v

First of all, the claimant requests the list of technical service jobs with their descriptive sheets identifying the people who occupy them by name and surname.

The list of jobs (RLT) is public both in accordance with the regulations governing the local civil service (art. 74 EBEP), and in accordance with the transparency regulations (art. 9.1 d) LTC in relation to article 20 of Decree 8/2021, of February 9, on transparency and the right of access to public information). The RLT includes all the existing jobs (occupied and vacant), of the official, labor and temporary staff of the administration and must contain, at least, the name of the jobs, the professional classification groups, the bodies or scales, if applicable, to which they are attached, the provision systems and complementary remunerations (art. 74 EBEP).

With regard to job descriptions, article 7 of the Working Conditions Agreement and the City Council's Collective Agreement provides that *"In any case, they must be stated on the job description, manual of functions or similar instrument approved by the Corporation, the tasks and/or functions of each of the jobs, in such a way that they conform to reality, with the understanding that before its approval, its content will be agreed upon with the staff representatives."* Therefore, it seems that, given that the content of the files must be agreed upon with the workers' representatives, this information could already be known to them. In addition, according to the claimant's statements, the City Council has already given her the descriptive sheets.

Therefore, given the provisions of the current regulations on the advertising of the RLT and the provisions on the approval procedure for the descriptive sheets, from the point of view of the data protection regulations there would be no problem in being able to access to this information.

The applicant also requests the first and last names of the people who hold each of the Council's jobs. It seems that the purpose would be to know the relationship or link between each municipal employee and the position they actually occupy. The claimant substantiates the request for this information *"in accordance with the right of access to information of Law 19/2014, of December 29, on transparency, access to public information and good governance, and due to the need to trade union activity". And also in accordance with the principle of publicity in the access and provision provided for in TREBEP (articles 10.2, 55.2 ai 78.1)."*

With regard to the first and last names of the people who hold each of the City Council's jobs, article 9.1.b) of the LTC imposes the obligation to actively advertise *"the internal organizational structure of the Administration and the bodies and entities referred to in letter a, with the identification of those responsible for the various bodies and their professional profile or career."*

Article 16.3 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), has come to specify the provision of article 9.1.b) LTC:

*"For the purposes of letter b) of article 9.1 of Law 19/2014, of December 29, it is understood that the information relating to the organizational structure includes the identification with first and last names of the persons holding all the bodies and areas provided for in the aforementioned rules.*

*They must also be informed of their telephone number and professional electronic contact channel, and their professional profile and career history and an identification or reference to the provisions by which they are named or designated must be published.*

*In local administrations, the information relating to the organizational structure refers to the administrative bodies of the corresponding administrative structures and their governing bodies.*

On the other hand, article 24.1 of the LTC provides that it is necessary to give access to identifying data related to the organization, operation or public activity of the Administration unless some special circumstance requires the protection of the persons concerned.

Regarding this, article 70.2 RLTC has established that *"For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the*



*name and surname, the position or position held, body and scale, the functions carried out and the telephone number and addresses, postal and electronic, of professional contact, referring to personnel in the service of public administrations, senior positions and managerial staff in the public sector of the administrations public."*

Therefore, access to merely identifying information (name, surname and position) and its link with the position they occupy, of public employees who intervene due to their functions in the various procedures or actions, is generally enabled public carried out by the Administration, unless there are specific circumstances that justify the prevalence of the right to data protection of the person or persons affected.

In accordance with article 1.2 LTC, the purpose of the Transparency Law is to establish a system of relations between people and the Public Administration and other obliged subjects, based on the knowledge of public activity, the incentive of citizen participation, improving the quality of public information and administrative management and guaranteeing accountability and responsibility in public management. It must be taken into account that, in the case at hand, the applicant is a trade union section of the town hall and justifies access due to the need for trade union activity. In this context, the claimant must be able to dispose of this information to be able to carry out their functions with full guarantees and effectiveness.

Knowing the link between each specific employee, whether civil, temporary or labor staff, and the specific position they effectively occupy, may be relevant to the effects that the trade union section can exercise its functions of control and evaluation of the performance of the Administration, such as, for example, the possibility of evaluating the effectiveness in the planning and management of human resources, if the use of the different forms of provision and access to jobs in the public sector is done with full respect for legal principles, in the cases and with the conditions established by the regulations, or if the tasks entrusted to the staff are appropriate for their position, all this in relation to what is available in the RLT and the descriptive files of the Corporation.

In this case, the STS of October 15, 2020 (rec. 3846/2019) is relevant, in relation to the request of the workers' representatives to know, among others, the name of the occupant of each position ( FJ 4):

*"Precisely on this Interpretative Criterion, the Social Chamber of this Supreme Court has pronounced, in the Judgment of December 16, 2019, in which the obligation of the General Administration of the State to facilitate to a union the occupation lists", which must contain the specific and individualized list of positions work of the Relations of Employment Jobs, name and surname of the holder of the position, if applicable, and the address of the work center to which the position is assigned.*

*Reasons for the aforementioned Sala de lo Social lo siguiente:*

*"In the present case, the defendant refuses to hand over the lists because it is specified that they contain the number and surnames of the workers, basic data that, without a doubt, constitute accurate information for their identification and location within the business organizational structure and which, therefore, are necessary for the development of the corresponding labor relationship. Therefore, we are dealing with data that do not require the consent of the affected person to be collected by the company.*

*(...) Therefore, it will be justified for the company to communicate personal data of the workers to the legal and/or union representatives so that they can exercise the powers that the law confers on them, this being a scenario that conforms to the exception of art. 11.2 a) LOPD. It seems obvious that yes, both art. 64 ET, as 10.3.1 LOLS confers rights of information and documentation to unitary and union representatives, the obtaining of the same through the communication of the company will be covered by that exception when, in fact, it is data that have direct connection with the exercise of those powers.*

*But in this case, the need to identify the workers who occupy each of the positions that the RTP relates to is not trivial, because the personal elements are related to aspects such as training, qualification, and specialization, being also necessary to define the circumstances of the vacancies, their coverage, order of priorities, replacement and promotion systems, etc.."*

The weighting of art. 24.2 LTC also requires assessing the possible damage that access to the information could cause to the people about whom their data is communicated.

As previously stated, the RLT is public and the claimant has already had access to the descriptive files requested by the Corporation. In this sense, the information requested in the case examined, although it is personal information since it refers to specific natural persons, is information strictly linked to the professional or work aspect of those affected, specifically, their relationship as civil servants career, interim or temporary and which position is occupied or if it is vacant. Therefore, it does not seem that their communication to the trade union section should be considered as particularly invasive of their privacy, given the information that is requested.

On the other hand, it should be remembered that people who access a job in the public administration through procedures that are subject, among others, to the principle of publicity, (articles 10, 55 and 78 of the TREBEP ) it does not seem that they can have expectations of privacy regarding the professional information that is requested to be known.

Because of all this, it does not seem that there is a degree of impact on the privacy of the people affected that allows the communication of the information requested by the claimant to be considered disproportionate.

In conclusion, in accordance with what has been explained, the right to the protection of personal data does not prevent the trade union section of the City Council from knowing the identity of the people holding positions in the City Council's technical services , such as that of temporary workers hired by the City Council and vacant positions.

In any case, the hearing procedure provided for in article 31.1 of the LTC must be given, so that it can be known if there is a specific personal circumstance that justifies the limitation of the right of access. The identifying data of these should not be provided when access affects employees or officials who are in a situation that requires special protection (for example being a victim of gender violence, etc.) that may be affected for the disclosure of information related to the workplace they occupy.

## VI

The claimant also asks for the "*duration of each person's temporary or temporary relationship with the city council.*"

Article 10 of the TRLEBEP specifies what is meant by an interim official and specifies that the selection of interim officials will have to be done through agile procedures and in any case respecting the principles of equality, merit, capacity and publicity.

On the other hand, the transparency regulations also provide for the publication of the result of the selection and job provision processes (art. 9.1.e)), which must also include that of temporary and interim staff (art. 21.1.d) RLTC).

On the other hand, article 9.1.d) of the LTC establishes that the information relating to the institutional organization and the administrative structure that the Administration must make public in application of the principle of transparency must include the "*list of temporary contracts and internships not linked to any job in said list of positions.*" The same is expressed in article 20.1 b) of Decree 8/2021, of February 9, on transparency and the right of access to public information.

Therefore, the initial date of temporary occupation of the site must already be advertised.

On the other hand, in the previous legal basis, we have already concluded that it is also possible to access the identity of the people who currently hold a certain job. The combination of both pieces of information makes it possible to know the duration of employment of a temporary job.

In addition, it should be borne in mind that with regard to positions occupied by interim or temporary positions, the Public Administrations have a margin of discretion that can justify the possibility of accessing the information necessary to check whether these appointments comply with the requirements of the regulations. The possibility of evaluating the discretionary use of the forms of provision of jobs that in principle must be exceptional and limited only to certain cases and for a limited time, as is the case of interim or temporary staff, can justify the the claimant's access to information on the duration of each person's temporary or temporary relationship with the city council.

On the other hand, from the point of view of the impact on the interested parties, it does not seem that providing this information entails a substantially different impact to that already derived from the publication of his appointment and the possibility of accessing the identity of the people who currently occupy each job.

## Conclusions

The data protection regulations do not prevent you from communicating to the trade union section of the City Council, the information you request about the relationship of Technical Services jobs with the descriptive files with the first and last names of the people who occupy the different jobs whether permanent, interim or temporary and the positions that are vacant, as well as the duration

of the interim or temporary relationship of each one with the city council, for the fulfillment of the functions of the representatives of the workers.

In any case, the hearing procedure must be granted as provided for in article 31.1 of the LTC to find out if there is a specific personal circumstance that justifies the limitation of the right of access.

Barcelona, April 6, 2022

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