

Report issued at the request of the Commission for the Guarantee of the Right of Access to the Public Information in relation to the claim submitted by a City Council worker against this local entity for denying access to the identity of the people responsible for the reclassification of their workplace, and to different organizational charts

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 City Council employee against this local body for refusal of access to the identity of the people responsible for the reclassification of their workplace, and to different organizational charts.

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

Background

1. On November 11, 2021, a municipal employee wrote to the human resources department requesting the following information:

"I am requesting information from which person or persons, either a political representative or official / labor representative, who has provided the company that is carrying out the valuation acts and the corresponding sheets, the instructions or the information so that the undersigned ceases to be a manager / head of the area and go on to join the local police and consequently assess the workplace with these circumstances, as well as who has given the company the generic functions described in sheet 016.

I am asking for the name and position of the person or persons who provided this information to the company that carries out the evaluation of jobs."

2. On January 28, 2022, this same worker addresses a new letter to the City Council's human resources department.

In this letter, the employee collects the City Council's response to his request for information dated November 11, 2021, in which, according to him, the following is indicated:

"As he explains, the City Council awarded the contract for the provision of consulting services for the analysis of the organizational design proposed by the City Council, adjustment,

development and implementation of the resulting organizational structure, through job evaluation.

The City Council (...) has regulatory and self-organization powers. For this reason and in use of the power mentioned above, several future organization charts are proposed which are collected in the working document prepared by the awarding company and which was transferred to the representatives of the MGN-C. In relation to the job descriptions, inform him that this information he has accessed is provisional information and has not yet been validated."

In view of this response, the worker states the following in this letter of January 28, 2022:

"Despite the clarity of the request made (...) this information has not been provided, so I reiterate the request: I am asking for the name and surname and position of the person or persons who provided this information to the company which carries out the evaluation of jobs.

(...)

Otherwise; in order to verify the veracity of the information provided, since the answer states that "several organizational charts are proposed", I would like you to provide me with a copy of the same where my name, my place of work or facts related to the RLT appear."

3. On February 17, 2022, the City Council issues a resolution on the worker's request for information of January 28, 2022 in the following terms:

"FIRST.- Require the applicant to justify, within a maximum period of 10 days, the need to know the identity of the person or persons referred to in his letter, so that the Document and Archive Management Area of (...) can weigh in a reasoned way between the public interest in the disclosure of this information and the protection of the rights of the people affected.

SECOND.- DISMISS the provision of the organization charts for the evaluation of the jobs because they are in the preparation phase and no definitive version has yet been prepared or approved."

4. On March 22, 2022, the City Council issued a resolution dismissing the worker's request for information as the required information had not been submitted by the appropriate deadline.

However, the file contains a copy of the worker's written response to said request, in which he states the reasons why he is interested in the requested information.

5. On March 25, 2022, the employee filed a claim with the GAIP against the City Council for denying access to the requested public information.

6. On April 1, 2022, the GAIP will send the claim to the City Council, requiring it to issue a report on which to base its positions, as well as the complete file

relating to the request for access to public information and the identification of third parties affected by the requested access.

7. On April 6, 2022, the City Council responds to GAIP's request by sending it the complete file of the request for access to public information.

The file contains a copy of the report issued by the head of the City Council's Document and Archive Management Area, in which, regarding the request for the name, surname and position of the person or persons responsible for providing the company the information necessary for the evaluation of the jobs, it is indicated that *"the motivation that the interested party can allege is considered important justifying their very specific request, given that the names of the people with technical and political responsibility in the area of Organization and Human Resources are public and known by all the employees of the City Council of (...)."*

8. On April 21, 2022, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, in relation to the claim presented.

Legal Foundations

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 the LTC, which regulates the complaint against resolutions regarding access to public information, establishes that if the refusal is based on the protection of personal data, the Commission must request a report to the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected, 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 (article 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 repeals Directive 95/46/EC (General Data Protection Regulation, hereafter RGPD).

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

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

Article 4.2) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (RGPD) considers "*«tratamiento»: 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.*"

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides that the treatment will be lawful if "*it 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 it can only be considered based on this legal basis of article 6.1.c) of the RGPD when this is 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 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), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC recognizes the right of people 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).

Article 2.b) of the LTC defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law".

For its part, article 53.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), specifies that it is public information subject to the right of access "all the information, any data or documents that the public administrations have prepared, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."

The information requested by the person claiming from the City Council, the subject of this claim, is public information for the purposes of article 2.b) of the LTC and, therefore, remains subject to the access regime (article 18 LTC).

This right of access, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account what is established in articles 23 and 24 of the LTC, as well as the principles of the personal data protection regulations.

III

The person making the claim has requested from the City Council "which person or persons, either a political representative or civil servant/labor officer, has provided the company that is carrying out the valuation acts and the corresponding sheets, the instructions or the information so that the person who subscribes ceases to be manager / head of the area and becomes part of the local police and consequently assesses the workplace with these circumstances, as well as who has handed over to the company the generic functions described in the form 016". Specifically, it asks for "the first and last name and position."

Regarding requests for access to public information that does not contain data deserving of special protection, as is the case at hand, article 24 of the LTC 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, the protection of personal data or other constitutionally protected rights must prevail.
2. (...)."

This article of the LTC allows access to the merely identifying data of the people who intervene by reason of their functions in the different procedures or public actions carried out by the Administration, unless there are circumstances

specific that justify the prevalence of the right to data protection of the person or persons affected or other constitutionally protected rights.

Article 70.2 of the RLTC specifies what is meant by merely identifying personal data in the following terms:

"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 performed and the telephone and addresses, postal and electronic, of professional contact, referring to staff in the service of public administrations, senior positions and managerial staff in the public sector of public administrations.

In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature.

If the signature is electronic, the electronically signed document must be published in such a way that the properties of the electronic certificate used for the signature cannot be accessed.

The location data must be deleted in the event that it is not merely identifying data of the author in his position of position or staff in the service of public administrations."

Therefore, in consideration of the transcribed articles, facilitate the claimant's access to the merely identifying data of the people who, in consideration of the responsibilities or functions assigned to them in matters of organization and human resources, have delivered, in in the present case, to the company in charge of the assessment of City Council jobs the information necessary for that purpose, a priori would not be contrary to the right to the protection of personal data. This, unless, exceptionally, in a specific case the protection of personal data or other constitutionally protected rights must prevail.

The City Council maintains that the reason that would lead to denying access to the person requesting the identification of these persons is the lack of motivation or justification regarding the need to know this information on the part of the now claimant.

However, it must be taken into account that, in accordance with article 18.2 of the LTC, 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."* Since, therefore, the LTC does not require justification for accessing public information held by the City Council, this cannot be a reason to limit access, although it is certainly necessary to know the purpose of the access it can be an element that is taken into account when making the necessary weighting.

It should be noted that both in the request for access and in the present claim, the person making the claim refers exclusively to knowing the name, surname and position of the people who, having provided certain information on the assessment and records of the jobs, and on the design of the organization chart of the City Council to the contracted consulting company. Therefore, in any case, merely identifying data that, based on the provision of the article

24.1 of the LTC, would be information directly related to the organization and operation of the City Council.

In this sense, it must be borne in mind that, beyond the generic statements of the City Council about the effect that the requested access could have on the affected persons, no reasons or circumstances are derived from the information provided from which it can be seen that the right to data protection of those affected, or another constitutionally protected right, must certainly prevail over the claimant's right of access, to the extent that personal circumstances are not proven to justify it.

Therefore, in the absence of having the allegations that the affected persons could have formulated - to whom the request and/or claim should have been forwarded in accordance with articles 31 and 42 of the LTC-, under article 24.1 of the LTC it is necessary to recognize the right of the person claiming to access the information they request.

IV

The person making the claim has also requested from the City Council a copy of the *"various organizational charts (...) where my name, my workplace or facts related to the RLT appear."*

In principle, the organization chart is the graphic representation of the organizational structure of the City Council, which visually describes the departmental structures and the respective workplaces with the hierarchical relationships between them. In terms of human resources, the organizational chart must show all hierarchical units and levels, as well as the respective jobs and their levels. Therefore, it is a document in which only the names of the jobs must appear, not the names of the people who occupy them. That is to say, in principle, it is public information that must not contain personal data (Article 4.1) RGPD). This would also be applicable in principle to the City Council's RLT, since the description of the jobs refers to the jobs and not to the people who occupy them. Consequently, there would be no impediment to handing over this information to the person making the claim, as data protection regulations do not apply.

In the present case and due to the information available, however, the person making the claim requests access to the various organizational chart proposals with which the external consulting company hired for the assessment of City Council jobs would be working .

This would also be linked to the RLT. In accordance with article 31 of Decree 214/1990, of July 30, which approves the Regulation of personnel in the service of local entities, in the administrative file of approval and/or modification of a list of jobs (RLT) must include, among other information, *"the supporting study of the administrative structure or its functional organizational chart" (section 1.a)).*

The analysis, description, evaluation and classification of the jobs are the first steps to follow to develop and/or modify the RLT. In the description of a workplace, the organizational chart aims to provide qualitative information about the structure that makes up the immediate environment of the workplace, thus being configured as the previous step to be able to assess work places. It is foreseeable that, in case of modification of the RLT, it will be incorporated into the file

the analysis of the current organizational chart of the City Council against the ideal and of the current positions against the ideals in the future.

In this case, the City Council cites as a reason for denying access to the requested information the fact that the evaluation of the jobs is currently under study and that, consequently, it has not been prepared nor approved yet a definitive version of the organizational chart.

Article 29.1 of the LTC states that requests for access to public information are inadmissible for processing in those cases where *"the information requested is in the preparation phase and must be made public, d "in accordance with the transparency obligations of title II, within the three-month period" (letter c).*

In any case, whether or not this request may be inadmissible for this reason, is a matter that is not for this Authority to assess, but simply the repercussion that any access could have for data protection.

In this regard, it should be noted that the applicant in the course of the claim requests access to a copy of the organization charts *"where my name, my workplace or facts related to the RLT appear"*. Therefore, an organization chart or an RLT is not strictly requested but is linked to the claimant's data. Regarding this, two considerations must be taken into account:

First of all, and insofar as it concerns data relating to the person making the claim, the data protection regulations would not prevent access, on the contrary, accessing this information would form part of the right of access that recognizes article 15 of the RGPD.

Secondly, the LTC, in regulating the regime of active advertising, establishes that the public administration, in application of the principle of transparency, must make public the information relating to *"the internal organizational structure of the Administration (. . .), with the identification of those responsible for the various bodies and their professional profile and career" (Article 9.1.b)).*

Article 16 of the RLTC specifies that *"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 by name and surnames of the persons in charge of 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 and an identification or reference to the provisions by which they are appointed or designated must be published" (paragraph 3), as well as "in local administrations, the information relating to the organizational structure refers to the administrative bodies of the corresponding administrative structures and their governing bodies" (paragraph 4).*

To the extent that the information on the internal organizational structure of the City Council, in the terms indicated, must be public, and with more reason given that the personal data requested seems to refer to the same claimant, the data protection regulations do not prevent the claimant's access.



Autoritat Catalana de Protecció de Dades

conclusion

With regard to the information that is available, the personal data protection regulations do not prevent the claimant from accessing the merely identifying data of the people who have communicated to the contracted consulting company the information necessary for the evaluation of City Council jobs, as well as the different organization chart proposals or the City Council's RLT.

Barcelona, May 4, 2022

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