



Autoritat Catalana de Protecció de Dades

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 of a trade union section against the denial by a city council of access to the necessary documentation to verify compliance with the agreement for the payment of the productivity supplement for the year 2021

The Commission for the Guarantee of the Right to Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the denial by a town hall of access by part of a trade union section in the necessary documentation to verify compliance with the Productivity Pay Agreement that was approved at the City Council Plenary.

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

Background

1. On December 15, 2021, the representative of the Trade Union Section of CCOO of a City Council a request for access to the following information:

"1. We are given the list of the Productivity Pay, based on article 12.F.4 of the Agreement/ Agreement of the City Council (...).

2. List of total days of absence, leave and leave without pay for all workers entitled to productivity pay.

3. List of days counted for people who are excluded based on point 3 "3. Those people who have been on medical leave, leave of absence, unpaid leave for a period exceeding 50% of the accrual period will be excluded from access to productivity pay. Employees of the city council who have been sanctioned through disciplinary proceedings and whose sanction is administratively final will also be excluded from the collection of this productivity pay.

4. List of those excluded by disciplinary file

5. The reports of the Heads of Area or Service and the Councilors to assess section 1 of each worker

6. List of total days of absence and calculated for the purposes of criterion 4

"CRITERIA 4: Lack of absences. The productivity supplement is paid proportionally to the service time worked.

Absences from the workplace will be deducted from the individual amount to be received as a productivity supplement.

Absenteeism means any absence from the workplace except for: - Leave due to incapacity due to work accidents and/or professional illnesses."

2. On February 18, 2022, the City Council will send the union representatives *"the Public Employment Offer Annex as well as the rectified staff seniority list and productivity list"*. This list includes the first and last name and a worker number and the amount in terms of productivity.

3. On March 3, 2022, the representative of the union section presents to the GAIP a claim stating the following:

"The trade union section has requested from the town hall the necessary documentation to verify the correct compliance with the unilateral Productivity Pay Agreement that was approved at the Plenary (...):

1. list of the Productivity Pay, based on article 12.F.4 of the Agreement/ Agreement of the City Council (...).

2. List of total days of absence, leave and leave without pay for all workers entitled to productivity pay.

3. List of days counted for people who are excluded based on point 3 "3. Those people who have been on medical leave, leave of absence, unpaid leave for a period exceeding 50% of the accrual period will be excluded from access to productivity pay. Employees of the city council who have been sanctioned through disciplinary proceedings and whose sanction is administratively final will also be excluded from the collection of this productivity pay.

In addition, it states that:

"The union section, (through the general secretary, Genís García), requested the information to verify the correct compliance with the Unilateral Productivity Payment Agreement that was approved in Plenary(...). The city council has had this information since before 15/12/2021 (as can be seen from the documentation delivered), but it did not deliver it to the union representatives until 18/2/2022, and partially. There is no information necessary to be able to carry out the union work (check the exclusion parameters of the productivity pay, the total amount, the valuation of the different sections...). The information provided is only the nominal ratio of workers who have received productivity pay, and the amount. The information provided is in PDF format, and is attached to this claim."

4. On March 14, 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, if where applicable, specifying the third parties affected by the claimed access.

5. On April 28, 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 the public information and good governance.

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/EC is repealed (Regulation general data protection, 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

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, will be considered an identifiable natural person*

elements of the physical, physiological, genetic, psychological, economic, cultural or social identity 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 these legal bases of article 6.1. c) and e) 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, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

In the case at hand, the trade union section of CCOO at the City Council requests the necessary documentation to *"verify the correct compliance with the unilateral Agreement on productivity pay that was approved on December 13, 2021"*. This information 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).

To the extent that the person requesting the information is a trade union section of the City Council (a condition that is proven in the documentation accompanying the claim), 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 subjects that have established a special access regime is regulated by their specific regulations and, additionally, by this law"*.

In accordance with the provisions of the aforementioned 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 able to access to said information.

III

The claim presented by the representative of the trade union section specifies that they want access to the necessary documentation to verify compliance with the Unilateral Agreement on productivity pay that was approved on December 13, 2021 and, specifically, to obtain from the 'collect the list of productivity pay, the list of total days of absence, leave and leave without pay for all workers who are entitled to productivity pay, the list of days calculated for people who are excluded based on in point 3 (*"Those people who have been on medical leave, leave, unpaid leave for a period exceeding 50% of the accrual period will be excluded from productivity pay*) and the list of those excluded for having been sanctioned through disciplinary file and its sanction is administratively final. It should be noted that

among the information that is claimed there is no other information that had previously been requested from the city council in the request for access to public information, and that this report is made taking into consideration the information that is the subject of claim

To the extent that the request is made by a representative of a union section, it is necessary to analyze, first of all, the rights that the union, labor and civil service regulations attribute to the union sections in terms of access to certain information.

In relation to this issue, 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 establish the status 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, however, it has not been proven that the person who submits the request for access to information on behalf of the trade union section, nor the one who submits the claim before the GAIP, has the status of delegate trade union

Therefore, unless the status of union delegate of the person acting on behalf of the union section is proven (in which case it would be necessary to analyze whether the special regime of the civil service regulations and the labor regulations would enable him to access the requested information), the trade union section does not have, in accordance with the LOLS, sufficient authorization to access the requested information.

Without prejudice to this, it should be noted that this does not exhaust the possibilities that the members of the Trade Union Section may have to access this information. In this sense, to analyze the possibility of communicating the information, it will be necessary to take into account the provisions of the transparency legislation.

IV

As has been said, the requested information is public information for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC). However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws.

Since the requested information contains personal data, Articles 23 and 24 of the LTC must be taken into consideration.

In principle, it can be ruled out that the requested productivity pay list contains personal data that is considered specially protected data under the terms of article 23 of the LTC, and, consequently, article 24.2 will have to be applied of the LTC:

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

a) The elapsed time.

b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.

c) The fact that it is data relating to minors.

d) The fact that it may affect the safety of people.

In accordance with this article, in order to determine whether the trade union section can access the requested information, it will be necessary to carry out a prior reasoned weighting between the public interest in the disclosure of the information and the rights of the persons affected. In this weighing it is necessary to take into account all the circumstances that affect each specific case with the aim of elucidating the prevalence between the right of access and the rights of the affected persons, taking into consideration, among others, the different elements listed the cited article.

Article 18.2 of the LTC provides that the exercise of the right of access to public information is not conditioned on the fact that a personal interest is involved, as well as not being subject to the motivation or invocation of any rule, knowing the motivation of the application may be a relevant element to take into account.

The claimant requests the information, as stated in the claim, in order to be able to perform his union functions and verify the correct compliance with the agreement for the payment of productivity pay that was approved in the Plenum of 13 of December 2021. Specifically, it refers to the need to *"verify the exclusion parameters of productivity pay, the total amount, the valuation of the different sections..."*.

With regard to the productivity supplement on which the claim is concerned, article 103 of the revision of the legal texts in force in the field of public service approved by Legislative Decree 1/1997, of October 31, applicable to the staff of local bodies by virtue of what is established in article 300.1 of the revised text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28, establishes the following:

"c) The productivity supplement, the purpose of which is to reward special performance, extraordinary activity and the interest or initiative with which the official carries out his work.

The overall amount will be set for each program and administrative body through a percentage on total personnel costs, which will be determined by the Budget Law.

The Budget Law will also establish the criteria for the distribution of this supplement. The person responsible for the management of each spending program, within the corresponding budget allocations, will determine, in accordance with the regulations established by the Budget Law, the individual amount that corresponds to each official.

The amounts received by each official for this concept will be public knowledge for the other officials of the department or the organization concerned and for the union representatives.

By regulation, each year, in accordance with the Budget Law, the technical evaluation criteria for the factors that determine the distribution will be established, as well as the participation formulas for the representatives of the staff involved

In the same sense, article 12, both of the Agreement of civil servants and of the Collective Agreement of the labor personnel of the city council, establish the criteria for the granting of the productivity supplement and, in the section 4, it is expressly provided that *"to the bodies of representative of the staff will be sent monthly the nominal ratio of the amounts paid for this concept so that they are aware of the staff."*

In the case of the productivity supplement for the year 2021, the Application Criteria for obtaining the annual productivity supplement (year 2020-2021) which are published in the Minutes of the plenary session of December 13, 2021, provided for:

"(...)

Article 5.5 of RD 861/1986 and article 172.5 of Decree 214/1990, corresponds to the Mayor the competence for the individual allocation of this supplement among the employees in which he participates, within the limits provided for in the Article 7.2.b) of RD 871/1986, subject to the criteria established by the plenary.

These amounts are not consolidable nor do they give rise to any type of individual right regarding valuations or appreciations corresponding to successive periods.

Regarding the criteria for distributing the €300,000 salary, article 12.f) section 4rt. 1 5th of the VI Labor Agreement and the Agreement on the Working Conditions of the civil servants of this Municipal Corporation, establish some of the factors or circumstances in which public employees may be remunerated through the concept of productivity supplement:

"4) When the employee has had to sustain a regular and continuous increase in his normal workload due to specific shortages of cash or due to the absence of colleagues as well as due to specific increases in work that make the execution necessary of the same in a certain time or terms...."

"5) When the employee has contributed to the achievement of at least 50% of the political objectives of the legislature that have been set. In cases where the achievement of objectives cannot be attributed to a specific service or group, the productivity supplement may be received by the entire workforce that contributed during the calendar year prior to the fulfillment of the set objectives. This supplement will take effect at the latest in the month of February of the year following the one set as the performance reference»

In this 2021 annuity, the following factors are added to these general criteria in order to be able to assess the concurrence of the objective causes that give the right to merit and pay for this concept:

"APPLICATION CRITERIA FOR OBTAINING THE SUPPLEMENT OF ANNUAL PRODUCTIVITY (Year 2020-2021)

1 It will only apply to those employees who have provided services to the City Council (...) during the accrual period (between April 16, 2020 and April 15, 2021) and who continue to provide their services on the date of payment of the productivity supplement payment.

2. Temporary contracts or work less than the annual salary if the employee works at the City Council during the subscription period, he/she will be paid the proportional part corresponding to the time worked.

3. Those people who have been on medical leave due to common contingencies (not due to a work accident or professional illness), leave or unpaid leave for a period exceeding 50% of the accrual period will be excluded.

Employees of the city council who have been sanctioned through disciplinary proceedings and whose sanction is administratively final will also be excluded from the collection of this productivity pay.

4. Factors subject to evaluation:

Two assessment sections are set up that will correspond to 90% of the maximum individual amount allocated for each job, factor 1, 2 and 3, the first section and absences from the workplace in the second section 10%.

TRACK 1:

a) Interest and initiative, extraordinary activity and special performance.

Factor 1: Special interest or initiative. This factor measures the degree of resolution and the formulation of suggestions and alternatives in the face of difficulties or critical situations, innovation in the development of tasks, the degree of involvement, commitment, participation and collaboration with the purposes of the public service

POINTS: Maximum 30

Factor 2: Extraordinary activity: This factor measures the availability and flexibility in the exercise of the functions of your workplace over and above the conventionally established one, the willingness to punctually perform new and/or different tasks from those usually carried out term and the special dedication and/or provision for possible changes and/or extensions of the working day due to the needs of the service.

POINTS: Maximum 30

Factor 3: Special performance: It measures the quality of the work assigned to it in terms of the absence of errors and efficiency and economy while using the minimum essential resources as well as the amount of work that is carried out and the time used by to carry out each task.

POINTS: Maximum 30

TRAM 2: It will carry 10% of the score on the total.

Factor 4: Lack of absences. The productivity supplement is paid proportionally to the service time worked. Absences from the workplace will be deducted from the individual amount to be received as a productivity supplement.

Absenteeism means any absence from the workplace except for:

Leave due to incapacity due to accidents at work and/or occupational diseases.

The first 21 days of the first temporary incapacity due to common illness in the reference year.

Any justified absence from the workplace lasting less than one day complete.

POINTS: Maximum 10

ASSESSMENT OF THE DEGREE OF FULFILLMENT OF EACH FACTOR OF THE FIRST SECTION

The minimum score will be 0 and the maximum score will be 30.

Between 4 and 10 points we will be facing a sufficient achievement = 50% of the achievement.

Between 11 and 20 points, degree of satisfactory achievement = 75%
Between 21 and 30 points, very satisfactory degree of achievement = 100%

The evaluation of the factors will be carried out by the superior with graduation at least head of service and the validation of the area head of the accrual period if applicable.

The jobs of heads of area will be evaluated by the Councilor/ Coordinator of Government.

The evaluation questionnaires will be delivered to the Human Resources Service.

A joint monitoring committee is set up with the following functions:

a) Receive prior information about the evaluation result

b) Monitor the assessment

c) Handle complaints

d) Propose resolution of conflicts by proposing the corresponding report.

The commission will be formed from the social side, by a member appointed by the company committee and another appointed by the personnel board and part of the City Council, an employee of the Human Resources Service and the Deputy Councilor for Human Resources.

ADVERTISING

The amounts received by each public employee for this concept will be public knowledge, both of the other employees of the corporation and of the union representatives.

The regulations analyzed provide that the amounts that each public employee receives as a productivity supplement can be known both by the other employees of the corporation and by the union representatives.

To the extent that the members of the trade union section are municipal workers, they will have the right to know the amounts that each public employee receives as a productivity supplement. Therefore, there must be no inconvenience from the point of view of data protection regulations in which this information is provided which, on the other hand, as has been exhibited has already been delivered by the city council.

V

The claim also requests access to the list of total days of absence, leave and leave without pay for all workers who are entitled to productivity pay.

According to the agreement published by the city council, the fourth factor that is evaluated to determine the amount of the productivity supplement is the lack of absences, in such a way that it is established that the productivity supplement is paid proportionally to the service time worked, specifically it is foreseen that :

"Absences from the workplace will be deducted from the individual amount to be received as a productivity supplement.

Absenteeism means any absence from the workplace except for:

*Leave due to incapacity due to accidents at work and/or occupational diseases.
The first 21 days of the first temporary incapacity due to common illness in the reference year.*

*Any justified absence from the workplace lasting less than one day
complete.*

POINTS: Maximum 10"

At the outset it can be said that communicating the days of absence, when this is based on a situation of absence from work of the worker, would entail communicating the health data of the latter and, as established in article 23 of LTC *"The requests of access to public information must be denied if the information to be obtained 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 document that must accompany the request."*

The claimant states that he is requesting the information to be able to exercise his union functions and verify the correct compliance with the agreement for the payment of productivity pay.

Now, the same agreement approved by the municipal council for the distribution of the productivity supplement for the year 2021 establishes a control mechanism through the creation of a joint monitoring commission, made up of representatives of the workers and representatives from the city council who must receive all the information necessary to carry out the relative functions monitoring the evaluation for the determination of the productivity supplement.

In this context, both due to the attributions of the LOLS and what follows from the specific regulations that regulate the productivity supplement, the trade union sections are not assigned control functions in this matter. Therefore, in weighing the rights at stake, the purpose of access would not place the trade union section in a different position than any citizen who wants to access public information.

From the point of view of the right to data protection of the affected workers, it is necessary to limit access to information on absences that have as their origin a leave of absence since this would entail the communication of special categories of data. Likewise, in the rest of the cases, the communication of the information relating to the total days calculated for leave and leave without pay for all workers who are entitled to productivity pay also affects the privacy of these people who, moreover, it is linked to personal and not strictly professional aspects of the workers.

While it is true that what is requested is the total number of hours computed and that this information does not require, in principle, to specify the reason for the absence, the fact of communicating a certain number of days of absence entails the communication, in any case of aspects of the private life of municipal workers that may be unnecessary for the purpose of controlling municipal action. In this sense, it must be taken into consideration that in accordance with the principle of minimization of article 5.1.c) the data

personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

From the point of view of transparency and the control of municipal activity, it does not seem that knowing the number of days that a public worker has devoted to situations of leave or unpaid leave provides sufficient elements for the control of the action of the municipal administration regarding the payment of the productivity supplement. It is clear that the control of the municipal action must be given by the verification that the procedure established by the regulations has been followed, that the corresponding commission has been constituted and that it has been able to evaluate all accredited data with respect to all municipal workers.

In the case at hand, the verification that the workers who have obtained a productivity supplement have not exceeded the number of hours established by the regulatory regulations, and that their translation to productivity supplement has been correct seems to be achievable also without sacrificing the privacy of these workers, for this reason access to this information should be limited.

However, it is necessary to bear in mind the provisions of article 25 of the LTC and article 68.2 and 70.5 of Decree 8/2021, of February 9, on transparency and the right of access to public information (henceforth, RLTC), which provide for the possibility of granting partial access, when the concurrence of a limit justifies it and that *"In cases where, in application of the reasoned weighting of article 24.2 of Law 19/2014, of December 29, access to public information that contains personal data is denied, public administrations, in application of the principles of proportionality and partial access, must grant access to the rest of information, prior to anonymization or pseudonymization of this data, when possible."*

In addition, article 70.6. of the RLTC provides that, with regard to this rule, anonymization will be equivalent to *"the elimination of the personal data of the natural persons affected contained in the information and any other information that can allow them to be identified directly or indirectly without disproportionate efforts, without prejudice to being able to maintain, where appropriate, the merely identifying data of the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act"*. And by pseudonymization *"the processing of personal data in such a way that they cannot be attributed to an interested person without using additional information, provided that this information is recorded separately and is subject to technical and organizational measures aimed at ensuring that personal data are not attributed to an identified or identifiable natural person."*

In the case at hand, despite the fact that the union section already has the information on the beneficiaries and the amounts finally paid, it does not seem that there is a risk of re-identification if the information is provided anonymously since the criterion of the number of days 'absence is only one of the 4 factors that are scored for the determination of the amount to be collected and, moreover, the assessment of this factor only corresponds to 10% of the maximum individual amount allocated for each place of work, so that this factor has a small impact on the final calculation.

This could be done, for example, by providing this information in a separate list, formalized using different sorting criteria, where the days of absence and the percentage

deducting the productivity supplement that this has entailed, or if appropriate their exclusion (if they exceed 50% of the time of the accrual period) and always in such a way that the people affected are not identifiable, directly or indirectly.

VI

The claimant also requests the list of employees of the city council who have been sanctioned through disciplinary proceedings and their sanction is final administratively, who, in accordance with point 3 of the agreement, will be excluded from the perception of the complement.

With regard to this information on workers excluded from the payment of the productivity supplement for having been sanctioned by a disciplinary file, it is the opinion of this Authority (for all the IAI report 2/2022), that the protection of the article 23 LTC to the information relating to the commission of criminal and administrative offenses that do not entail a public reprimand to the offender must be understood as applicable also to administrative disciplinary sanctions, not so to disciplinary sanctions subject to labor law.

In this way, at the outset, it would be necessary to deny access to the trade union section to the list of officials excluded for having been sanctioned by disciplinary proceedings.

With respect to those excluded for having been sanctioned by disciplinary proceedings, who are labor personnel, it must be taken into account that in accordance with article 2.4 of Decree 214/1990 of July 30, which approves the Regulation of personnel in the service of the local entities, the regime of the relations of this staff is governed in its integrity by what is established by the rules of labor law. Therefore, the disciplinary files of the labor personnel are governed by the rules of labor law and, consequently, the sanctions that derive from them cannot be considered administrative disciplinary sanctions and the limit provided for in article 23 of LTC, rather, it will be necessary to analyze access to this information in accordance with the criteria provided for in article 24.2.LTC

In this sense, it has already been stated that access must be denied to the list of officials excluded for having been sanctioned by an administrative disciplinary file. With regard to the disciplinary records of labor personnel, it should be borne in mind that, although these are not special categories of data, the fact that a person has been affected by a labor disciplinary sanction can have clearly harmful consequences for to the affected persons (equivalent to those who could have the disclosure of the commission of an administrative disciplinary offense to which the regime of article 23 LTC would apply), which may affect both their professional and social sphere or even familiar.

On the other hand, it does not seem that the knowledge of this information is necessary for the purposes of controlling the municipal action regarding the payment of this supplement in such a way that the weighting of the rights at stake would be favored in favor of the protection of the privacy of municipal workers who have been the subject of a disciplinary file, in the same way that the privacy of civil servants is protected. Access to this information must therefore be denied to both civil and labor personnel.

In short, to guarantee this protection that the data protection regulations give with respect to workers excluded for having been the subject of a disciplinary file, it is

necessary to also deny access to information on the total days of absence calculated for excluded workers.

conclusion

The personal data protection regulations do not prevent access to the trade union section to the requested information consisting of the list of the productivity pay of municipal workers for the year 2021, with specification of the amount received by each worker .

Access to the list of total days of absence or days off work attributed to workers who are entitled to the productivity supplement could be facilitated through another list, prior to anonymization.

Access to the list of staff excluded for having been sanctioned by the city council through a disciplinary file must be denied.

Barcelona, May 26, 2022

Machine Translated