

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 presented by the Board of Administration and Services Personnel of a public university against the same university for denial of access to the documentation provided by the participants in a merit competition to provide vacant jobs for administrative and services personnel

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 presented by the Board of Administrative Personnel and Services of a university against this same university for denying access to the documentation provided by the participants in a merit competition to fill vacant jobs of administrative and service personnel.

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 February 22, 2022, a person, representing the Administration and Services Personnel Board of a university (PAS Board), sent you a letter requesting the following public information:

"1. I request the minutes of the meeting of the Valuation Commission where it agrees on the distribution of the non-preferential merit score for each job. Also the reports, opinions, resolutions and any other documentation taken into consideration in order to substantiate your agreement.

2. I request the minutes of the meeting of the Valuation Committee where it agrees on the award proposal and the distribution of the preferential and non-preferential merit score for each contestant in each job. Also the reports, opinions, resolutions and any other documentation taken into consideration in order to base their agreement".

2. On March 22, 2022, the University resolves the request for access to public information mentioned above in the following sense:

"First.- Estimate the request for access to public information presented by Mr. (...) i to grant access to the requested information consisting of the minutes of the evaluation commission that judged the awarding of the jobs of the merit competition to provide forty-seven vacant jobs of official personnel of administration and services of the University (...)."

In this resolution, and for the purposes that concern it, the University states (FJ I) that the evaluation committee *"did not prepare or have any report, opinion or resolution or other documentation taken into account"* to promote the agreements adopted to which refers to the Board of PAS in its application for access.

3. On April 19, 2022, the PAS Board files a complaint with the GAIP against the University for denying access to the requested public information.

In the letter that accompanies the claim, the PAS Board states that, in accordance with points 3 (documentation that must accompany the request for participation) and 6.2 (evaluation of the merits) of the basis for the call for the procedure provision of jobs to which your request for access refers, it is clear that the assessment committee has the necessary documentation of the participants to base the different assessment of merits and that this information has not been given to it.

On the other hand, the Board of PAS confirms in this letter the receipt of five acts of the evaluation commission relating to the agreements adopted by this qualifying body during the course of the provision procedure.

4. On May 6, 2022, the GAIP will send the claim to the University, requiring it to issue a report on which to base its positions, as well as the complete file relating to the access request to public information and the identification of third parties affected by the requested access.

5. On May 27, 2022, the University sends the GAIP a copy of the file relating to the access request that is the subject of this claim. He also requests an extension of the deadline to communicate the required report on the University's position in this regard.

6. On June 3, 2022, the University sends the report issued by the general secretary on this claim to the GAIP.

In this report, once it was stated that it was not deduced from the way in which the request was expressed that what the PAS Board was asking for was all the documentation provided by the people participating in the merit competition, the University maintains that the requested access cannot be granted *"in view of the fact that (...) the work of deleting data (especially protected and irrelevant), as well as the work for the necessary transfer to the 82 interested parties so that they can presenting allegations is excessively voluminous and not simple; that it is not possible to anonymize the information preserving the identity of the candidates since it can be deduced indirectly; that no indication of irregularity has been alleged by the applicant in the procedure on which a specific control is to be carried out, nor have there been any contestations in this; that the competition evaluation committee itself is made up of two members of the PAS Board; that all the necessary information for the candidates has been published; (...)"*, among other issues.

7. On June 9, 2022, the GAIP transfers the University's report on the present claim to the PAS Board and asks if, in view of the considerations made in said report, they maintain their claim to access the documentation provided by all the people participating in the job provision process.

8. On June 22, 2022, the PAS Board informs the GAIP that they maintain the claim to access said public information.

9. On June 30, 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 government, in relation to the claim presented.

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 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

The object of the complaint is, as can be seen from the statements of the complaining party and from the set of information contained in the file, access (and copy) to the documentation provided by the people participating in the contest of merits carried out by the University to provide forty-seven vacancies for administrative and service personnel.

In accordance with section 3 of the rules for the aforementioned merit competition, approved by (...), the application for participation must be accompanied by the following documentation:

*"3.1 A **curriculum** in which the applicant alleges his merits and abilities, and describes the tasks carried out in the jobs held, so that the commissions value it.*

(...)

*3.2 The **academic qualification**: whether it is constitutive of a requirement, and therefore mandatory compliance to be declared admitted to the competition, or whether it is contributed so that it is valued as merit, and without prejudice to the fact that it is alleged in the curriculum, must be certified as detailed in this paragraph.*

(...)

*3.3 **Training**: whether it is constitutive of a requirement, and therefore mandatory compliance to be declared admitted to the competition, or whether it is provided so that it is valued as merit, and regardless of whether it is alleged in the curriculum, s must certify as detailed in this paragraph.*

In order for the training to be evaluated in the competition, the applicant must attach to the application a list of courses issued and validated by the PAS Training Unit.

If it is not provided by the applicant, it will be incorporated ex officio in order to be evaluated by the committee.

(...)

*3.4 The **services provided** are assessed ex officio and recorded in the personal file of the PAS of the UB; therefore, there is no need to plead or prove them.*

However, the services provided in other administrations that are not recorded in the personal file, notwithstanding that they are alleged in the curriculum, must be documented. The request must be accompanied by an original electronic document or an authentic copy that proves these services provided.

(...)

*3.5 In the case of applicants with a **disability**, the commissions may ask the interested person to provide a report issued by the team*

multi-professional disability assessment of the department competent in this matter to ensure that the applicant can sufficiently and autonomously perform the functions and tasks of the job called for, or that he can do so through an adaptation that does not involve an exorbitant modification in the context of the organization and that it is not incompatible with the content of the site and the public service to be provided."

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.

The LTC establishes that the public universities of Catalonia fall within its scope of application (Article 3.1.c)), as well as that, for the purposes of this Law, they are considered Public Administration (Article 2.f) .

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 documentation provided by the participants in the merit competition carried out by the University that is the subject of the claim is public information for the purposes of article 2.b) of the LTC and, consequently, remains subject to the regime of the right of access (article 18 LTC).

III

The first additional Provision, section 2, of the LTC provides that *"access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law. "*

The bases for the call for the merit competition provide, in its point 5.1, that two members of the administration and services staff appointed by the official PAS Board are part of the evaluation commissions of the competition, among others.

According to the information available, the person presenting the claim would not be part of the said evaluation commissions, so the request for information relating to the supporting documentation of the merits alleged by the people participating in the contest of merits that is being examined would not be framed in the exercise of the functions that correspond to the members of this type of qualification bodies.

Specifically, the file states that the claimant is acting in this case on behalf of the University's PAS Board, of which he would be a member, by agreement of the same PAS Board in session on February 9, 2022 .

This is a relevant question, given that the personnel boards are, together with the personnel delegates, the representative bodies of civil servants (article 39 of Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (TRLEBEP)) and, as such, they have a specific regime of right of access to information, so it is this regime that is needed apply with priority, without prejudice to the supplementary application of the access regime provided for in the transparency legislation.

Specifically, article 40.1 of the TRLEBEP attributes to the personnel boards, and also to the personnel delegates, the right to *"receive information, on the personnel policy, as well as on the data referring to the evolution of the retributions, evolution probable of employment in the corresponding field and performance improvement programs" (letter a)), as well as the function of "monitoring compliance with the current regulations regarding working conditions, prevention of occupational risks, Social Security and employment and exercise, as the case may be, the appropriate legal actions before the competent bodies" (letter e)).*

In view of this, the eventual access to the personal information of University officials by their representatives should, in any case, be authorized in this function of monitoring the rules in force.

However, beyond the cited precept, there is no other specific provision that is directly related to the processes for the provision of jobs. For this reason, apart from the provisions of the specific access regime (TRLEBEP), it will be necessary to take into account the provisions of the transparency legislation, the purpose of which is, as can be seen from article 1.2 of the LTC, establish a relationship system between people and the public administration and other obliged subjects, based on knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of accountability and responsibility in public management.

In this context, if citizens must be able to have this ability to control and hold public administrations accountable, with more reason, if applicable, this ability must be recognized in the workers' representatives, in the case at hand, in the Board of STEP

However, the right of access to public information (article 18 LTC) is not absolute and can be denied or restricted for the reasons expressly established in the laws (article 20 et seq. LTC). Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account articles 23 and 24 of the LTC, article 15.1 of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), and the principles of personal data protection regulations.

IV

Article 23 of the LTC provides that requests for access to public information *"must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, the trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request."*

In similar terms, article 15.1 of the LT, in its wording given by the eleventh final provision of the LOPDGDD, provides the following:

"1. If the requested information contains personal data that reveal the ideology, trade union affiliation, religion or beliefs, access can only be authorized if there is the express and written consent of the affected person, unless said affected person had made it manifestly public the data before access was requested."

If the information includes personal data that refers to racial origin, health or sex life, includes genetic or biometric data or contains data related to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, access only may be authorized in

in the event that the express consent of the affected person is counted or if the latter is covered by a rule with the force of law."

In accordance with the rules for the call for the merit competition, which has been mentioned in section II of this report, the participating people must attach their curriculum vitae to the application for participation, in the effects of alleging their merits and capabilities, and describing the tasks carried out in the jobs they hold or have held (point 3.1). It cannot be ruled out, in view of the information that participants provide in this curriculum, that there may be data deserving of special protection.

Beyond this, it must be taken into consideration that, in accordance with point 3.5 of the call's rules, the evaluation commissions "may" ask participants "with some disability" to provide "a report issued by the multi-professional disability assessment team of the department competent in this matter to ensure that the applicant can sufficiently and autonomously perform the functions and tasks of the job called for, or that he can do so through an adaptation that does not involve a modification exorbitant in the context of the organization and which is not incompatible with the content of the site and the public service to be provided".

Bearing this in mind, in the event that among the documentation provided by the people participating in the merit competition there is information that is particularly protected or deserving of special protection and, in particular, this disability assessment report, it would be necessary to preserve its confidentiality, unless the express consent of the affected persons had been provided with the request or if some other of the enabling circumstances provided for in article 15.1 of the LT, cited. If none of these circumstances occur, the right to data protection would prevail over the right to access this information.

V

The access of the PAS Board to the rest of the documentation provided by the applicants to accredit the merits alleged in the competition, as stated in point 3 of the basis of the call (curriculum vitae, without prejudice to the considerations before carried out; academic qualification; courses; and services provided), requires a reasoned weighting between the public interest in the disclosure of information and the rights of the affected persons, as provided in article 24.2 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.*
- (...)."*

For the purposes of said weighting, it must be borne in mind that the information requested is not part of the information that, in accordance with the regulations applicable to the provision process in question (basis of the call, public service and transparency regulations) must be made public by virtue of the principle of transparency, so the people participating they may have a certain expectation of privacy in this regard, at least in the sense that this information must not be known by any person outside the provision process who requests it.

It should also be taken into account, as pointed out in section III of this report, that the request for information does not come from one of the members of the competition evaluation commissions nor, therefore, requests access as a member of the qualifying body. As highlighted in the [IAI 45/2021 report](#), to which we refer (available on the Authority's website), if it were a member of the evaluation commission, he could access the information relating to the participating people through his presence in the body's sessions qualifier and could also consult the information that these people had provided and that was the subject of assessment, although it would not be justified to obtain a copy.

Given that in the present case the request is made by the representatives of the official staff of the University (specifically, the PAS Board), it is necessary to analyze whether access to this information would be necessary to achieve the purpose of access pursued , which should be framed within the exercise of functions legally attributed to the personnel board, or at least if it would be justified to access it to achieve the purposes of transparency provided for in the LTC.

Although the exercise of the right of access is not subject to motivation (article 18.2 LTC), knowing the motivation for which the person claiming wants to access the information or, in this specific case, a minimum explanation of the need or relevance of the data requested for the exercise of its functions as a body representing workers may be a relevant element to take into account for these purposes.

This is evident in the recent STS of February 9, 2021, by noting (FJ VI) that *"it is relevant, therefore, that it mediates the proper relationship between the personal data of the statutory staff that are requested, with the important union function that develops So that only when these personal data are necessary for the exercise of trade union work, they could be considered exempt from consent, but not when they are disconnected or their relationship is unknown, as their connection with said trade union functions has not been made clear. (...) when the documentation and information is requested, no explanation is expressed, nor is any reference or mention made, on the usefulness of it for the fulfillment of its trade union duties. There is also no attempt to link your request for data with the tasks legally attributed to union representatives. (...)."*

In this sense, it can be said that the PAS Board, as a collegiate body representing workers, should be able to have the necessary information to monitor the evolution of the University's employment policy (articles 40 TRLEBEP). Thus, it should be able to have information about the calls made, their content, the advertising mechanisms used, the number of people who participated or other information about the calls.

However, the fact of having to have information related to the selection and provision processes carried out by the University does not necessarily imply that access must be given to the set of information of all the people who participated as applicants (in this particular case, 82 people), so that they are identifiable.

Giving access to the aforementioned information (curriculum vitae, qualifications, training, services provided) would facilitate the creation of profiles and this, in the workplace, is a measure that can be quite invasive of the privacy of the people affected, which can affect both the unfolding of his life in the personal sphere, as well as in the social or professional sphere.

For this reason, this Authority has been considering (among others, in reports [IAI 18/2021](#) or [IAI 20/2021](#), available on its website) that it is convenient to distinguish access to this type of information for non-selected participants - in this case those who have not obtained or have not been awarded a vacant job - from access to this same information of the finally selected persons to whom a vacant job is awarded.

Given that the request for information from the workers' representatives must be understood as made in the context and for the purpose of control over the actions carried out by the University in the provision process, which is necessarily governed by the principles of merit, capacity, equality, publicity and transparency (article 78 TRLEBEP and article 9.1.e) LTC), it is not seen, in this sense, what impact it may have on the control of the administrative action of the evaluation commissions on the part of the workers' representatives the fact of knowing information about people participating in the merit competition who have not obtained or have not been awarded a vacant job, so that they are identifiable.

These people, despite opting for one of the forty-seven places called for, have not been finally selected, so they have not been favored at any time with the decision adopted by the assessment committee.

The reasons adduced by the complaining party in its last letter presented to the GAIP (written in response to the request of June 9, 2022) relating to the observation of irregularities, without further details regarding this (*"perhaps the procedure is not 'has contested individually, but we are receiving news of different situations in which this circumstance could have occurred" and "we have detected signs"*), cannot be considered sufficient for the purposes of justifying the prevalence of the claimed right of access by the PAS Board on the right to data protection of the affected persons (participants who have not been awarded a place).

On the other hand, the possibility of providing anonymized data must be ruled out. In a case like this, the removal of the personal identifying data of the affected persons from said information or documentation would not be an effective tool to guarantee its anonymization, given that the information could easily be linked to a specific identifiable person. It is necessary to bear in mind, in this sense, the context in which the request is made and the fact that the information about the identity and the broken down score obtained by all participating persons in relation to the alleged merits has been published in the University's electronic headquarters as an annex to the job award decision.

Therefore, from the perspective of data protection regulations, it would not be justified to obtain access to and a copy of said documentation certifying the alleged merits, relating to the people participating in the competition who have not obtained a job or who have not been awarded a job.

With regard to the selected persons, it is necessary to consider whether access to said information could be justified in view of what is established in article 31.6 of TRLEBEP.

Article 31.6 of TRLEBEP provides the following:

"6. The most representative trade union organizations in the field of Public Service are authorized to file administrative and judicial appeals against the decisions of the selection bodies."

This precept recognizes the legitimation of trade unions representatives to contest the decisions of the selection bodies. And, consequently, this legitimation allows us to presuppose his qualification to analyze the file before making the challenge.

As highlighted in the [IAI 20/2021 report](#), to which we refer (available on the Authority's website), if the person requesting the information is a representative of the workers who is part of a trade union organization that has the condition of being the most representative, in order to carry out the control of the administrative action it seems that the access could cover not only the identity of the person or persons selected to whom it has been awarded a job, but also the knowledge of the alleged merits that have been taken into account (qualification, training, courses, experience, services provided) and the score obtained.

Certainly, this access would lead to a considerable impact on the right to data protection of the people awarded the vacant jobs as a result of the competition, given that it allows to know not only the score obtained, but other relevant aspects of their academic life or professional that allow you to obtain a profile. However, this limitation seems to necessarily derive from the recognition of the legitimacy mentioned by the TRLEBEP, given that it would not make sense to recognize the legitimacy to appeal administratively or through litigation, without being able to access the information necessary to analyze the viability of the appeal .

This, without prejudice to excluding certain identifying and contact data of the people who have been awarded a job that can be stated in the documentation provided and that, from the perspective of the principle of data minimization (article 5.1.c) RGPD), would be unnecessary (DNI number, telephone, address, signature, etc.), and also without prejudice to the fact that this access would not justify obtaining a copy, given the breadth of information that may affect, the persons affected and the consequences that may arise from it, as provided for in the second paragraph of article 72.3 of the RLTC.

However, in the present it must be taken into account that the request for information is made by the Board of PAS, not a representative of the workers of a union organization that has the condition of being more representative, so the forecasts of article 31.6 of the TRLEBEP mentioned would not enable the intended access.

Consequently, the information to which the PAS Board may have access must be limited to query of the identity of the people who have obtained a job and the scores obtained in the different merits assessed, not being justified in obtaining a copy (article 72.3, second paragraph, RLTC). This is without prejudice to the right of access that may correspond to trade unions that have the condition of being more representative, in accordance with what has been explained.

conclusion

The access and obtaining of a copy, by the PAS Board, of the documentation certifying the merits alleged by the participants in the provision process carried out by the University does not comply with the regulations of Data Protection. The query should be limited to the identity of the people who have obtained a job and the scores obtained in the various assessed merits.

Barcelona, July 15, 2022

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