

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against the City Council's denial of information on the tests carried out by its staff, the bases of each selective process, the publications in official newspapers and everyone's contracts.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the City Council's denial of access to information about the tests carried out by its staff, the bases of each selective process, the publications in the official newspapers and the contracts of each one.

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

Background

1. On April 4, 2022, a citizen submitted to the City Council a request for access to the following information:

"I want a copy of the tests carried out in the selective processes to access the positions of ALL the staff currently working in this town hall according to the staff template that was sent to me with a certificate, as well as the bases of each selective process, the timely publications in the official newspapers and everyone's contracts".

2. On June 2, 2022, the same citizen presented a claim to the GAIP in which he stated the following:

"I have requested the identity of the person who has breached the resolution (...) of the GAIP.

I have requested a list of minor contracts carried out by the City Council in 2021.

I have requested copies of the tests carried out by the working staff of the City Council of (...), the bases of each selective process, the publications in the official newspapers and the contracts of each one, since on the website of the City Hall has no record of any of this."

3. On June 15, 2022, the GAIP sends the three claims to the City Council and requests a report setting out the factual background and the foundations of its position in relation to the three claims, as well as the complete files and, if where applicable, specifying the third parties affected by the claimed access.

4. On July 5, 2022, the GAIP requests a report from this Authority, of the claim that corresponds to the request for "*copies of the tests carried out by the working staff of the City Council of (...), the basis of each selection process, the publications in the official newspapers and the contracts of each one, since there is no evidence of any of this on the*

City Council website.” in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance

Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the APDCAT is the independent body whose purpose is to guarantee, in the field of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must request a report from the Catalan Data Protection Authority, which must be issued within fifteen days.

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

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

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

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

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

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

According to the information sent, the request for access presented to the City Council was intended to obtain "*copy of the tests carried out in the selective processes to access the positions of ALL the staff currently working in this town hall according to the staff template that was sent to me with a certificate, as well as the bases of each selective process, the appropriate publications in official newspapers and everyone's contracts.*"

In the claim presented to the GAIP, it requests information regarding "*the identity of the person who has breached resolution 708/2019 of the GAIP, the list of minor contracts made by the City Council in 2021 and a copy of the evidence carried out by the working staff of the City Council, the bases of each selective process, the publications in the official newspapers and the contracts of each one, since there is no record of any of this on the website of the City Council.*"

In the report request that the GAIP addresses to this Authority, it only refers to the claim corresponding to the information relating to the "*copy of the tests carried out by the working staff of the City Council, the bases of each selective process, the publications in the official newspapers and everyone's contracts, since there is no record of any of this on the City Council's website.*"

For this reason, this report will focus only on that issue included in the complaint.

III

The object of the claim is a citizen's request for access to the tests of the different selection processes for the city council's staff claimed (in which the claimant does not appear to have participated) as well as the bases of each selective process, publications in official newspapers and individual contracts.

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

Article 4.2) of the RGD 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 RGD 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* .

It follows from all this that the claimant's access to the personal data that may contain the requested information on the basis of the fulfillment of a legal obligation by the City Council (responsible for the treatment (art. 6.1.c) RGPD), must necessarily be covered by a rule with the rank of law.

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).

The information subject to the claim is public information for the purposes of article 2.b) of the LTC, and is 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, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data.

IV

Given the object of the claim, and, in particular, the fact that information is requested about the selective processes, it is expected that among the information requested there may be categories of data that deserve special protection, such as the data relating to health. In this sense, with regard to the request for the tests carried out, it should be borne in mind that in personnel selection processes there may be physical tests, tests involving an assessment of aspects of personality, test adaptations or medical fitness certificates.

Article 23 of the LTC, relating to personal data deserving of special protection, establishes the following:

"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade

union affiliation, religion, beliefs, 'racial origin, health and sexual life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents by means of a written which must accompany the application."

In similar terms, article 15.1 of the LT, in its wording given by the eleventh final provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), provides that:

"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 it may be authorized if the express consent of the affected person is counted or if the latter is covered by a rule with the force of law."

According to article 70.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information: *"For the purposes of what is provided for in article 23 of Law 19/2014, of 29 December, it is up to the applicant to provide the express and written consent of the holders of the personal data affected by the requested access. The public administrations can transfer the request and the consent to the person holding the data in order to certify the written consent provided, in case of doubt about its veracity.*

In accordance with these provisions, it is necessary to preserve the confidentiality of this data and to limit access, unless the express consent of the affected persons was provided with the request. It does not appear from the available information that the person making the claim has the consent of the affected persons.

V

In relation to the rest of the personal data that may be contained in the requested documentation that is not affected by the provisions of article 23 of the LTC, the analysis must be carried out based on the provisions of the article 24 of the LTC, according to which:

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

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

a) The elapsed time.

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

First of all, it should be noted that from the request for access to information submitted by the claimant to the city council, it does not appear that the claimant has the status of an interested party in the personnel selection processes of which he requests information and that would grant him a reinforced or privileged right of access with respect to other potential information requesters who have not participated in that selective process.

Having said that, from the point of view of the right to data protection, one of the circumstances that can be taken into account is the purpose of the access. In this sense, although article 18.2 of the LTC provides that the exercise of the right of access is not conditional on the concurrence of a personal interest, and does not remain subject to motivation, it does not require the invocation of any rule, knowing the motivation for which the person claiming wanted to obtain the information may be a relevant element to take into account.

According to the information contained in the file sent, there are no elements that allow us to deduce what the purpose of requesting access would be. In any case, the purpose of the Transparency Law contained in article 1.2 of LTC must be followed which states that "*the purpose of this law is to establish a system of relations between people and the Public Administration and the other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of the retention of accounts and responsibility in the public management*".

It is in this context that it is necessary to assess whether or not access to the tests carried out by the participants of each of the selection processes for which the information that they are now employees of the Corporation is required, the bases of each selective process, the publications in official newspapers and everyone's contracts.

First of all, it must be taken into consideration that personnel selection procedures are based, in accordance with their regulatory regulations, on the principles of equality, merit and ability, transparency and publicity.

In this sense, the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (EBEP) (applicable as established by article 2.1.c) to official staff and, where appropriate, to the labor staff of Local Entities), establishes these principles in article 55, which provides:

"1 . All citizens have the right to access public employment in accordance with the constitutional principles of equality, merit and capacity, and in accordance with the provisions of this Statute and the rest of the legal system."

Law 7/1985, of April 2, regulating the Basics of the Local Regime, in article 91.2 provides:

"The selection of all personnel, whether civil or labor, must be carried out in accordance with the public employment offer, by means of a public call and through the system of contest, opposition or contest open opposition in which are guaranteed, in any case, the constitutional principles of equality, merit and capacity, as well as that of publicity."

The Legislative Decree 2/2003, of April 28, approving the revised Text of the Municipal and Local Regime Law of Catalonia (hereafter TRLMRLC) establishes in article 285 that *"local corporations must publicly formulate their job offers"*. Article 286 provides in terms similar to the EBEP that access to the status of career official or labor personnel of local corporations must be done in accordance with the public offer of employment, through a public call and compliance with the constitutional principles of equality, merit and capacity must be guaranteed, as well as the announcement of the calls must be published in the BOP and the DOGC.

Decree 214/1990, of 30 July, which approves the regulations for personnel in the service of local entities, regulates the different access procedures for personnel of local administrations, under the principle of publicity (article 63 and below) and contains provisions relating, among others, to the publication of notices of calls, rules, etc. Such as article 76, relating to civil servants, in which it is foreseen the need to publish the call to the DOGC and the BOP together with the bases, or article 90, in the case of labor personnel, which also provides the need to publish it in the DOGC and the BOP, together with the bases.

With regard to the basis of the calls, article 70 of Decree 214/1990 provides that they must contain:

- "a) Number, nature and characteristics of the places subject to call, and express determination of the scale, subscale and class to which they belong; indication of the degree group to which each one corresponds and determination of those reserved for internal promotion, if applicable.*
- b) Selective system.*
- c) Aptitude or knowledge tests that must be passed, and determination of their number and nature.*
- d) The conditions and requirements established in the following article.*
[...]
- f) Selective tests that must be carried out and, where appropriate, list of merits that must be taken into account in the competition phase, as well as the accreditation and assessment systems for these merits.*
[...]
- h) Qualification system and minimum score for each test.*
[...]"

Therefore, the basis of the call in principle will not contain personal data. But even in the case that they contained them, it must be taken into account that they are subject to publication, so from the point of view of the right to the protection of personal data, it does not seem that there should be an obstacle that can be accessed through the right of access.

The Decree also foresees, among others, the need to publish the list of admitted and excluded (article 78), the appointments of civil servants in the corresponding official

newspaper (articles 82) , the appointment of temporary staff and the hiring of labor staff temporary, in the case of maximum urgency (article 94).

Secondly, from the point of view of active advertising, article 9.1.e) of the LTC establishes that they must be published (on the transparency portal or the corresponding electronic headquarters) " *The calls and the results of the processes recruitment and promotion of personnel*".

This article has been developed by article 21 of Decree 8/2021, of February 9, on transparency and the right of access to public information, which establishes:

"1. For the purposes of letter e) of article 9.1 of Law 19/2014, of December 29, the public administrations must publish the calls for proposals and the results of:

- a) Access procedures to the bodies and scales of official, statutory and labor personnel.*
- b) Internal promotion procedures.*
- c) Provisional and definitive provision procedures.*
- d) Procedures for the selection of temporary staff or temporary workers, including temporary staff exchanges.*
- e) Scholarships and grants for providing services.*
- f) Intern recruitment offers.*

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

3. The update of the publication of the data is continuous, depending on the development of each call. In the event that there is no data to be published, this end must be noted."

In accordance with all that has been said, the local regulations and the transparency regulations foresee different advertising obligations in relation to the selection processes of the administrations. Therefore, in the case at hand, the right to data protection does not prevent access to information about the results of the tests carried out, the bases of each selective process and publications in official newspapers. This with the understanding that the information should be limited to the selected candidates. On the other hand, and by virtue of the minimization principle, access to this information regarding non-selected candidates would not be justified, given that in this case the damage to their privacy may be greater and, on the other hand, the public interest in its transparency it is much less intense.

Now, it does not seem that access to the specific content of the tests carried out , at the time, by the candidates finally selected, as well as the contracts of each one can be justified.

It is clear from the outset that access to the specific content of the tests carried out can cause harm to the people affected and, even, can end up acting as a dissuasive element when citizens decide to participate in a selective process Obviously, if participation in a selective process can end up involving the general dissemination of the content of the tests

carried out, this can discourage participation, by having to publicly expose one's abilities and knowledge.

The affected persons who would have participated in a selection procedure, with expectations of privacy regarding the content of their tests (delimited by the regulations governing the call which, in the event of being selected, could lead to access to its content by other participants in the process, but not by any citizen without a direct interest in the procedure), constitutes an element unfavorable to the communication of information.

Likewise, access to the content of everyone's contracts entails an intrusion into the right to data protection of workers, which may affect their personal, social, economic or professional sphere. This without prejudice to the fact that any citizen can have access to the position occupied by all staff, their category and level, the salary and the remuneration supplements associated with the position, as derived from the workplace relations and the agreements on working conditions that must be published

Article 70.5 of Decree 8/2021 of February 9, on transparency and the right of access to public information, establishes that the cases in which, in application of the reasoned weighting of Article 24.2 of LTC, 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 the information, after anonymization or pseudonymization of this data, whenever possible.

In the case at hand, the anonymization or pseudonymization of the requested information cannot be an effective means of guaranteeing the rights of the affected persons, given that it cannot be guaranteed that the re-identification of the affected persons will not occur having in consideration, among others, the context in which the communication would take place (a relatively small municipality with 178 inhabitants in 2019) or the previous information that the person receiving the information may have about these people that allows them to reach identify the holders of the information provided, in such a way that the deletion of the identifying data would be an ineffective anonymization .

Therefore, in this case, it will be necessary to limit access to the tests carried out and to the content of the employment contracts established with each of the workers.

conclusion

The right to data protection does not prevent the claimant from accessing and obtaining copies, in the terms set out, of the information relating to the selective processes of employees of the City Council of (...) regarding the type of evidence in carry out, the bases of each selective process and the publications in the corresponding official newspapers that have been the subject of publication in accordance with current regulations , referring to the finally selected candidates.

However, access to the content of the tests carried out by each of the candidates in personnel selection procedures, as well as the contracts of each one, is not justified.

Barcelona, September 7, 2022

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