

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 refusal by a city council of the relationship from the year 2010 to the year 2019 of the overtime hours and the amounts received by each local police officer as overtime

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 denial by a city council of the relationship from 2010 to 2019 of overtime hours and the amounts received by each local police officer in terms of overtime hours.

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 March 4, 2022, the president and secretary of the trade union section of the GM of a town hall of the SPL-CME union, on behalf of that trade union section, request the following documentation from that town hall:

"1.-Complete relationship from the year 2010 to the year 2019 of the quadrants monthly shifts and schedules of the GM (...), validated by the mayor's office.

2.-Complete report from the year 2010 to the year 2019 of overtime carried out by each agent of the GM(...). Detailing the day and the reason for the realization of the same .

3.- Complete report from the year 2010 to the year 2019 of the amounts yearly received by each GM agent (...) in terms of overtime ".

2. On May 4, 2022, the president of the trade union section presents a claim to the GAIP in which he states that the City Council has not provided him with the information and claims the following:

"The breakdown of the payroll, calculation of overtime, modifications of the payroll."

3. On May 25, 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 applicable , specifying the third parties affected by the claimed access.

4. On June 1, 2022, the city council requests from the GAIP an extension of the deadline to present the requested information.

5. On June 9, 2022, the GAIP notified the city council of the extension of the deadline by a maximum of 7 more days.
6. On August 8, 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 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.

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 first issue that must be taken into consideration regarding the claim, according to the documentation sent by the GAIP to this Authority for the issuance of this report, is that there is a discrepancy between the information that was initially apply to the City Council and the information requested by way of complaint.

Thus, in the initial request, the complete report was requested from the year 2010 to the year 2019, of the monthly quadrants of shifts and schedules, the overtime hours worked by each agent and the monthly amounts received by each agent in concept of overtime, relating to the local Police, while the claim indicates that you want access to " *The breakdown of the payroll, calculation of overtime, modifications of the payroll.* "

To the extent that by way of complaint it is not possible to request from the administration new information regarding that which was the subject of the procedure for requesting access to public information, this report does not analyze the access to the payroll breakdown of local police officers, or to payroll modifications, which had not been previously requested. For this reason, this report will focus only on the right to access the calculation of overtime hours worked by each agent and the amounts received by each agent in terms of overtime hours as requested from the city council on the initial request, including the reasons for carrying out these hours.

III

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 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 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 for 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 established in 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), data processing may 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 applicant'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 additional provision first paragraph second of the LTC establishes 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 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). This information contains personal data.

In the case we are dealing with, the person submitting the request for access to public information is a trade union section, given what is established in the first additional provision of LTC, it is necessary to analyze whether the trade union sections have a special access regime derived from the trade union regulations, which are applicable in this case.

IV

The request is made by the representatives of a trade union section. This circumstance may be relevant for the purpose of carrying out the analysis of the case in question to the extent that the rights recognized to unions, or union sections may be different from those corresponding to union delegates and workers' representatives.

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.

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 this case, the recognizes the right to:

" 1. Have access to it information and documentation that the company makes available to the works committee , standing delegates obliged _ trade unions to keep secret professional in those matters in which legally proceed .".

Consequently, as already stated in our opinion CNS 57/2021, the trade union section, as an internal organizational instance, would not hold the rights recognized by article 10.3 of the LOLS, to the trade union delegates but it corresponds to exercise them in these

Thus, in accordance with what has been explained, article 10.3 of the LOLS recognizes union delegates as equal, in terms of access to information and documentation, to members of the works committee or of the representative bodies in the public administrations, in cases where they are not part of these representative bodies.

The analysis of the access request made by a union delegate, or by those who are part of the specific bodies representing the staff, in accordance with the first additional provision of the LTC, requires recourse to the regime of access to information established by Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee (hereafter EBEP) as well as the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 5/2015, of October 23 (hereinafter, ET). And this without prejudice to the fact that the provisions of the transparency regulations must additionally be taken into account.

These rules attribute to the boards or staff delegates (art. 39 EBEP), as well as to the staff delegates or Company Committee (art. 62 and 63 ET), as specific bodies representing civil servants and public workers with employment contract respectively, certain functions for the exercise of which it recognizes the right to access certain information, which could include personal data of the workers.

Article 40.1.a) of the EBEP provides that the Personnel Boards and personnel delegates must receive information on the personnel policy, as well as data relating to the evolution of remuneration, probable evolution of the employment in the corresponding field, and on performance improvement programs. However, there is no specific regulation in the EBEP that would enable individual access to the requested information.

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

Next, sections 2 to 5 of this article 64 of the ET contain specific forecasts in relation to the questions or matters on which the works councils have the right to receive information on a quarterly basis (article 64.2 ET), annual (article 64.3 ET) and others when appropriate (article 64.4 and 5 ET).

All this for the purpose of exercising, among others, the function of "*monitoring compliance with the rules in force in matters of labor, social security and employment, as well as the rest of the agreements, conditions and usages of the company in force, formulating, as the case may be, the legal actions timely before the employer and the bodies or courts competent*" (article 64.7.1.a) ET).

At the same time, it is also necessary to take into account in the case at hand article 34.9 of the ET, section introduced by Royal Decree-Law 8/2019, of March 8, which recognizes the workers' representatives the possibility to access to the daily records of the working day of workers subject to labor legislation, when it establishes that:

*"9. The company will guarantee the daily register of working days, which it must include the specific start and end time of each working person 's working day, sin loss of flexibility timetable established in this article .
through negotiation collective agreement or company agreement or, in its entirety defect, decision of the employer prior consultation with the representatives workers in the company, this time register will be organized and documented .
The company will keep the records referred to in this provision during four years and will remain available to people trabajadoras, from above representatives legal and of the Labor and Social Security Inspection ."*

In accordance with this provision, the representatives of the workers subject to the ET (in the event that the local police of the city council had labor personnel) can have access to the daily record of the working day of each working person and, in consequence also in the register of overtime hours with the corresponding identification of the workers affected.

However, as a result of the regime of entry into force provided for in the sixth final provision of Royal Decree-Law 8/2019 (which does not provide for it to be retroactive), the measure is applicable only to the data of the records made from May 12, 2019, which is the date it entered into force. Therefore, it could only be applicable to information after that date.

In short, the regulations analyzed provide that trade union representatives can access the information relating to overtime worked by public workers with employment contracts from May 12, 2019, in accordance with the provisions of article 34.9 of the 'ET.

In the case at hand, however, neither the letter of request (presented by the president and the secretary of the trade union section) nor the claim (presented by the president of the trade union section) states the status of delegate trade union of the people who present them, nor is there evidence that this fact has subsequently been accredited, nor is there any mention of this condition to obtain the required information. Therefore, and in the absence of proof of this circumstance, the analysis of the claim must be carried out in accordance with the provisions of the regulations of the LTC.

The right of access to public information regulated in the LTC is not configured as an absolute right but rather it 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 personal data.

Access to information on overall overtime worked by the local police workforce as a whole would not present problems from the point of view of the right to data protection. However, if the individualized information regarding each agent were given, as requested, it would contain personal data that could be related to an identified or identifiable natural person, so it will be necessary to analyze whether this can be accessed information

Given the nature of the information requested, it does not appear that there should be particularly protected data in the terms provided for in Article 23 of the LTC, that is, data relating to ideology, 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. In the event that there is information of this type and in the absence of the owner's express written consent, access should be limited.

Beyond the specially protected data referred to in article 23 of the LTC, and in accordance with article 24.2 LTC, a weighting must be done between the public interest in the disclosure of information and the right to data protection of the affected persons:

"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, access to the requested personal information is subject to prior reasoned weighting, which must take into account all the circumstances that affect each specific case, with the aim of determining whether the public interest must prevail in the disclosure of the information or the right of the affected persons who, in this case, would be the local Police officers of the claimed municipality.

In general, it is clear that knowing the number of overtime hours worked by local police officers over a period of time, and even knowing what the need or justification was for carrying them out, allows information to be obtained on the management of the City Council's resources and staff. At the same time, this purpose would be in line with the objective of the transparency regulations, that is to say, *"to establish a system of relationship between the people and the public administration and the other obliged subjects, based on the knowledge of the 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"* (article 1.2 LTC), or in other terms, establish the possibility of offering citizens tools for monitoring the performance of public authorities.

It should be noted that this Authority has pronounced on several occasions in relation to access to certain information on overtime, such as reports IAI 27/2019, IAI 1/2020 or IAI 57/2022, the conclusions of which they are also applicable to the case at hand.

From the point of view of the people affected, knowing the number of overtime hours in an individualized way entails knowing information that can be part, according to each case, of the complementary remuneration or related to time compensation, which are essentially linked not to the place of work but to the physical person who occupies it. This information, which may refer to the income of a natural person, may facilitate the obtaining of an economic profile of the affected person which may end up causing damage both in the professional field and in front of financial institutions, socially etc., especially if this information crosses with other information referring to the basic salary, and remunerative supplements of the jobs held by public employees, for example via publication of the RLT and the corresponding Budget Law.

In terms of remuneration, the transparency legislation obliges public administrations to publish on an individual basis *"The remuneration, compensations and per diems, the activities and assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of the public bodies, societies, foundations and consortia, and the indemnities they must receive when ceasing to hold office"* (11.1 b) of the LTC) and, on the other hand, to be published in a grouped manner, based on of the levels and bodies, *"The general information on the remunerations, compensations and allowances received by public employees"* (11.1 e) of the LTC).

This obligation of active advertising in the matter of remuneration must entail recognizing the right of access to the remuneration information of senior local officials, including overtime hours worked, compensations and per diems received. This same criterion, as this Authority has highlighted in other reports, can be extended with respect to access to the remuneration of staff who occupy positions of trust, of special responsibility within the organization, of free appointment, or who they carry a high level of remuneration.

This could be the case of the head of the local police force, who, under the command of the mayor or the person to whom he delegates, exercises immediate command of the force (article 26.1 of Law 16/1991, of July 10, from the local police). The head of the police has the following duties: *"a) Direct, coordinate and supervise the operations of the body, and also the administrative activities, to ensure their effectiveness. b) Assess the needs of human and material resources and formulate the relevant proposals. c) Transform into concrete orders the guidelines for the objectives to be achieved, received from the mayor or the office to which he delegates. d) Inform the mayor, or the position to which he delegates, of the operation of the service. e) Fulfill any other function attributed to him by the municipal regulations of the body"* (article 27 of Law 16/1991), and therefore, his situation would be comparable to that of managerial positions.

As for the rest of the agents, this Authority has maintained that, in accordance with transparency legislation, information on remuneration must be provided in an aggregated manner, that is to say, associated with the jobs of the Public administration in question grouped according to the levels and the bodies to which they belong, without having to indicate the identity of the specific person who occupies a certain job.

It is worth noting that according to the information published on the electronic headquarters of the claimed city council regarding the staff of the City Council, approved together with the budget for the year 2022, the municipal staff is made up of 9 Municipal Supervisors (of which appear as vacancies 2). One of these would perform the functions of Head of the Vigilantes. In this case, it would not seem that there could be any inconvenience in giving the applicant the information about the overtime hours worked by the person who holds the functions of one of the supervisors. However, with regard to the rest of the workforce, the remuneration information must be provided in an aggregated manner.

According to article 18.2 LTC, the right of access does not require the citizen to state the specific reasons that would justify access to certain information, but these may be relevant when deciding on the prevalence between other rights, in fact the purpose is one of the weighting criteria that, as we have seen, points out in article 24.2. b) of the LTC, the trade union functions of the person making the claim could justify the need to control whether the total number of overtime hours in the period of time and the reasons that underpin them are adequate to the needs of the municipality .

In this context, obtaining an individualized report of the overtime hours worked by the supervisors can be relevant for the purpose of evaluating the management carried out by the governing bodies of the corporation, the criteria for the assignment of certain services and, ultimately a control of public expenditure, which could justify the claimant's access to the requested information.

However, the principle of minimization requires that the data be adequate, relevant and limited to what is necessary for the purpose for which they are processed (Article 5.1.b) of the RGPD). In application of this principle and, given the purpose of the access in this case, it is considered that the city council could, at the outset, provide the information without needing to sacrifice the privacy of the affected workers.

As this Authority has previously highlighted, if the volume of the group affected is large, the treatment that could be applied to the information would consist of prior pseudonymization of the data, which consists, in the terms of the RGPD in "*data processing _ personal in such a way that they can no longer be attributed to an interested party yes to use information additional , as long as stated information additional figure separately and is _ subject to measures technical and organizational intended to guarantee that the data personal data are not attributed to an identified or identifiable natural person*" (article 4.5 RGPD).

Pseudonymization is also provided for in article 70.6.b) of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC)

Pseudonymization is, therefore, a treatment of information that is subject to data protection regulations, and which consists, for example, of replacing a person's first and last name, or any other identifying data , with a code, so that if there is no additional information, known only to the person who has carried out the pseudonymisation , which allows establishing a link, it will not be possible to know who this code corresponds to. In the case being examined, it must also be taken into account that when dealing with municipal security guards, the use of the TIP of each security guard cannot be considered a suitable means for pseudonymization , given that it is a numerical code that can easily be known, without disproportionate effort, by the rest of the workers and, in this case, by the person requesting the information.

In any case, however, in the case at hand, given the small number of people affected by the request, it is not considered that pseudonymization is effective in guaranteeing the non-identification of the people affected. Consequently, the information must be provided in an aggregated form regarding the total number of overtime hours worked by the municipal supervisors and the global amounts that have been remunerated for this concept.

Finally, in relation to the claim to know the reasons that justified the performance of overtime and the day, if it is a justification relating to the reason why a service is assigned to a certain person, it is clear that this information directly affects personal data. In this case, in line with what has been explained, the purpose of control could be achieved in the same way without identifying the affected persons, offering only information on the general criteria taken into account when attributing the carrying out the hours and on the specific circumstances that justify the need to carry them out.

conclusion

In accordance with the data protection regulations, the overtime hours worked by the Local Police officers of the City Council to which the query refers, the annual amounts received and the reasons for their completion can only be communicated in an aggregated manner for all members of the workforce, except in the case of the local police chief, in respect of whom the requested information can be provided.

Barcelona, September 1, 2022