

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 annual gross remuneration of certain individuals who are employees of the Corporation.

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 on the annual gross remuneration of the corporation's personnel.

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 July 9, 2022, a citizen submitted to the City Council a request for access to the following information:

*" **First** _ Information on the annual gross remuneration, from 2017 to 2020, of the administrative assistant category officials who provide their services at the City Council:*

- Urban planning (...)*
- Intervention (...)*
- Recruitment/intervention (...)*
- Secretary (....)*

*This information must **not** include **three years** and must be **based on 100%** of the working day.*

(...)

***second** _ Information on the annual gross base salary of each of the administrative assistant category officials from 2017 to 2020.*

***third** In relation to points one and two, information on the type of supplements and the gross annual amounts assigned to each of them from 2017 to 2020.*

***room** Annual remuneration for the year 2022 assigned to the officials with administrative category of the City Council:*

- OAMR (new addition)*
- Intervention (new incorporation)*
- Urbanism (...)*
- Mayor's office and electronic administration (....)*

*This information must **not** include **three years** and must be **based on 100%** of the working day.*

***fifth** _ Information on the annual gross base salary of each of the administrative category employees for the year 2022.*

***Sixth.** In relation to the fourth and fifth points, information on the type of supplements and the gross annual amounts assigned to each of them for the year 2022.*

seventh _ *The monthly gross basic salary and the gross amount of the monthly allowances provided for the following interim officials:*

- *Administrative assistant intervention (...).*
- *Administrative general services (...)*"

2. On August 10, 2022, the same person presented a claim to the GAIP in which he requested *the "gross annual remuneration of City Council employees (...)"* and explains that *"I have been a career employee of the City Council (...) since 2018. There are indications that I receive discriminatory and unequal treatment from the administration in terms of my remuneration. Prior to the complaint, I requested the information to check the salary discrepancies between employees of the same category and level. There is no published data prior to the year 2020 and the information published on the transparency portal regarding the year 2020 is not true according to information I received from the City Council's intervention area. I have submitted my application twice without receiving any response from the administration ."*

3. On August 23, 2022, the GAIP sent two claims to the City Council and asked for a report setting out the factual background and the foundations of its position in relation to the two claims, as well as the complete files and, if where applicable, specifying the third parties affected by the claimed access.

4. On October 6, 2022, the GAIP again requires the City Council to provide it with the requested information immediately.

5. On October 7, 2022, the GAIP requests a report from this Authority, of the claim that corresponds to the request of *" the "gross annual remuneration of City Council employees (...)"* d 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

The complaint to the GAIP is lodged against the City Council's lack of response to the request for access to information presented, on July 9, 2022, by the person making the claim, an employee of the same City Council, for which he sought obtain access to information on the "*gross annual remuneration of City Council officials (...)*".

The remuneration data of municipal workers are personal data, defined in article 4.1 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 treatment of personal data (hereinafter, RGPD), such as "*all information about a natural person identified or identifiable ("the interested party")*", and considered as an identifiable natural person

"every person whose identity can be determined, directly or indirectly, in particular by means of an identifier, como por ejemplo a number, an identification number, data of location, an online identifier or one or more elements of identity physical, physiological, genetic, psychological, economic, cultural or social of said person."

In accordance with the provisions of article 5.1.a) of the RGPD, any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in any 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 relating to the remuneration received by workers who provide services to a City Council, which it must have, and which is the subject of the claim, is "*public information*" for the purposes of article 2.b) of the 'LTC, and is subject to the right of access provided for in this regulation (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 provided for in the laws, as is the case with the limits of articles 23 and 24 of the LTC regarding the personal data.

III

The person making the claim requests "*the annual gross remuneration of City Council employees (...)*" and states that "*I have been a career employee of the City Council (...) since 2018. There are indications , that on the part of the administration, I receive discriminatory and unequal treatment regarding my remuneration. Prior to the complaint, I requested the information to check the salary discrepancies between employees of the same category and level. (...)*".

On the other hand, the initial request before the specific City Council includes your request in the following terms:

- The annual gross base salary and the types of supplements and gross annual amounts, from 2017 to 2020, of each of the civil servants in the category of administrative assistants who provide their services to the City Council, specifically, the following: "*Urbanism (...)* *Intervention (...)* *Contracting/intervention (...)* *Secretary (...)*".

- The base salary and gross supplements, for the year 2022, of each of the civil servants in the administrative category who provide their services to the City Council, specifically, the following: *"OAMR (new incorporation) Intervención (new incorporation) Urbanism (...)* Mayor's office and electronic administration (...)"
- The base salary and gross monthly supplements of the following two interim civil servants : *"Administrative Intervention Assistant (...). Administrativa servicios generales (...)"* without specifying the time period.

Considering that the information requested does not affect the data considered especially protected under the terms provided for in article 23 of the LTC, access to the requested information requires a reasoned weighting between the public interest in the knowledge of said information and the right to data protection of the persons affected, in accordance with the criteria provided for in article 24.2 of the LTC:

"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.*
- (...)."*

As it is also not merely identifying data directly related to the organization, operation or public activity of the Administration, it is necessary to make a prior reasoned weighting between the public interest in the disclosure of the information and the rights of the affected people.

To make this weighting, it is necessary to take into account 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, it is not subject to motivation and does not require the invocation of any rule, knowing the motivation for which the person claiming wants to obtain the information is a relevant element to take into account.

The private or particular dimension of the right of access to public information is specified in allow people to access information that may be of interest to their sphere of particular interests and in this sense, the purpose of access plays an essential role a the time to weigh between the two rights at stake.

In this specific case , the person requesting the information, who is an official of the Consistory itself, states that the reasons why he is interested in having the information is

because " *There are indications that, from the administration, I receive a discriminatory and unequal treatment in terms of my remuneration. Prior to the complaint, I requested the information to check salary discrepancies between employees of the same category and level.*"

From this it follows that the purpose of the access is to be able to have sufficient information to check whether there is an alleged discriminatory and unequal treatment in remuneration with respect to the rest of his colleagues, and according to the results, to be able to file the relevant complaint by the person making the claim.

First of all, it should be noted, in general and from the perspective of the right to the protection of personal data of the persons affected, that information on the remuneration of a job provides information on the economic and work profile that can affect the person who occupies it, both in the professional sphere and in the social and economic sphere, and this is directly, facilitating the identification of the person who occupies the specific position, or indirectly, when it deals with places that can be related, by other means, without disproportionate effort, to the people who occupy them.

Regarding remuneration, article 11.1.e) of the LTC, establishes that they must be made public:

"e) The general information on the remunerations, compensations and allowances received by public employees, grouped according to the levels and bodies."

In the case we are dealing with, we are talking about personnel with the professional category of administrative and administrative assistants, therefore, from the outset, article 11.1.e) of the LTC applies, which establishes that the information general remuneration must be made public "*grouped according to levels and bodies*".

Article 25 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC) provides:

"1. For the purposes of letter e) of article 11.1 of Law 19/2014, of December 29, it is understood by:

a) Remuneration: the financial compensation that can be received for the work carried out.

Information must be given on the overall gross annual remuneration of the different bodies and levels, with details of the basic remuneration and the supplements that correspond according to the regulations, and the agreement or non-agreements that apply. In this sense, the remuneration tables of the personnel in the service of the public administrations must be published, with an indication of the basic and complementary remunerations, in the case of civil servants, and with an indication of the basic remunerations, complement of seniority, extraordinary payments and other supplements and specific bonuses according to the agreement or outside the agreement, in the case of labor personnel.

(...)"

Based on the information available, the claimant would be referring to the remuneration information in article 25.1 RLTC - basic remuneration and supplements, except for the three-

year period, and not to other remuneration concepts, such as per diems or compensations (art. 25.1 , sections b) and) RLTC, respectively).

In accordance with the above, the information must be published in an aggregated manner.

In addition, it should be borne in mind that article 9.1.d) of the LTC establishes that public administrations must make public:

"d) The list of jobs for official, labor and casual staff, and the staff and the list of temporary contracts and internships not linked to any job in said list of positions."

On the other hand, article 74 of the Basic Statute of the public employee, approved by Royal Legislative Decree 5/2015, of October 30 (EBEP), establishes:

" Public administrations must structure their organization through workplace relationships or other similar organizational instruments that include, at least, the designation of positions, professional classification groups, bodies or scales, if applicable, to which they are attached, the provision systems and the complementary remunerations. These instruments are public."

As for local bodies, art. 283.4 of Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal and Local Government Law of Catalonia (TRLMRLC) establishes:

"(...)

4. A copy of the list of jobs - as well as the workforce - must be sent to the competent Department of the Generalitat in matters of cooperation with the local Administration of Catalonia, within thirty days from approval, as well as publishing it in full in the BOP and the DOGC."

Therefore, the advertising of the RLT, which includes the complementary remuneration of each job, derives from both the civil service regulations and the transparency regulations provided for in article 9.1.d) LTC.

On the other hand, it is also clear that once the group to which a certain job is attributed is known through the RLT, this can easily be related to the basic remuneration for the staff in the service of the public administrations established in the successive budget laws for each group of the public function.

Although the publication of the RLT does not include the direct identification of City Council workers, in many cases they can be easily identified indirectly.

Therefore , there is no impediment to being able to access the remuneration tables grouped by bodies and scales, nor to being able to access, in accordance with the regulations in force on RLT advertising, the remuneration information contained in the RLT and information on the basic remuneration of each job, without, in this sense, having to indicate the identity of the specific person who holds or has held a certain job.

With regard to the productivity supplement, article 103.1 c) of Legislative Decree 1/1997, and in the same sense articles 172. 3 of Decree 214/1990 of the regulation of personnel in the service of local entities, and 5 of Royal Decree 861/1986 on the remuneration regime for local government officials expressly provides that the amounts received by each official are public knowledge for the rest of the corporation's officials, in addition to union representatives.

In this sense, the legislator makes the interest in obtaining said information prevail over the right to privacy of the affected workers, and therefore, the expectations of privacy that the workers may have are limited. These people must have the possibility that the rest of their colleagues know the amounts they may have received for this concept.

In addition, it must be remembered that the individual allocation of these supplements to each worker ultimately depends on the Mayor. Although it must obey previously set objective criteria, its granting is based on aspects of discretion, complying, of course, with the principles of transparency, objectivity, impartiality and non-discrimination. This discretion when it comes to distributing among working people, the global amounts provided in the budget reinforces the need for transparency.

With regard to extraordinary gratuities, they must obey extraordinary services provided outside the working day, and they cannot be fixed in their amount or periodic in their accreditation, and the fact that access cannot be ignored to the individualized information of the amounts allocated for this concept to each of the affected persons may be relevant for the working person who requests it, since he could have been financially harmed in the distribution of the allocations.

The principles of transparency, objectivity, impartiality and non-discrimination that should govern the allocation of extraordinary gratuities, which ultimately depend on more discretionary decisions, would justify access by the claimant to information on the amounts received in an individualized manner.

In this sense, on the one hand, from the point of view of the working person making the claim, it may be relevant to obtain the requested information, for the purposes that the affected party can verify that the remunerations received by the rest of the colleagues have been assigned following the criteria and guiding principles of the civil service.

On the other hand, from the point of view of the affected workers, it is true that the disclosure of information on the salary supplements received could facilitate the obtaining of an economic profile on the affected people, especially considering that the supplements associated with the workplace (destination and specific supplement), are part of the LRT, which means that anyone can access in a relatively easy way the amounts assigned to the respective workplaces to these two concepts (destination and specific supplement), either through the RLT itself or by relating the information on the group and category of a specific position contained in the RLT with the amounts approved in the respective budget laws for these groups or categories.

Despite the above, this purpose can also be fulfilled without needing to sacrifice the privacy of the affected workers. Thus, an individualized relationship could be facilitated, without including the identity of the working people. This would allow the claimant working person to

check the amounts received and detect any discriminatory situations that may have occurred by assigning, for example, extraordinary services to some working people to the detriment of others.

pseudonymization of the information should be opted for , i.e. say *"the treatment of personal data in such a way that no longer can be attributed to an interested party without using additional information, as long as it says so additional information appears separately and is subject to technical and organizational measures intended to ensure that personal data are not attributed to a natural person identified or identifiable;"* (article 4.5 RGPD).

To this end, this Authority considers that a list could be provided with the remuneration of each official and temporary worker, replacing the first and last names with a code assigned to each of them that does not allow identification by third parties, of such way that allowed to see and control the amounts received by the different working people.

However, in order for these codes to be effective from a data protection perspective, it is necessary to ensure that the identity of the workers is known only to the person who attributes the code, so that the workers are not identifiable to any other person .

In this sense, using the DNI number or another code that can be known by third parties would not be a good option. The replacement of the first and last name by the initials would not guarantee that the affected person cannot be identified without making disproportionate efforts, especially taking into account that these are people from the same work environment as the claimant and that it is the claimant herself who provides the unit and the initials of the person who occupies that particular position.

On the other hand, and in order to avoid re -identification , the grouping of workers in the different categories, it can only be carried out if it is about jobs that count with a sufficiently large number of workers, in such a way that identifying each worker requires disproportionate time or activities. This is an element that should be kept in mind in a case such as the one proposed, in which, due to the size of the administrative and auxiliary workforce in a small town hall, it is possible that the information cannot be provided by grouping the workers in the different categories.

For all this, it is considered that the option of providing the claimant with a list of the requested remuneration together with a numerical code in place of the first and last names of the workers would be the most suitable, in order to find in this case the fair balance between the right to the protection of personal data of the affected workers and the right of access to public information of the person claiming, except for the productivity supplement that must be provided identifying each worker, in compliance of the local regulations that expressly provide that the amounts received by each official are public knowledge for the rest of the corporation's officials.

conclusion

The data protection regulations do not oppose the claimant's access to the salary tables and the salaries associated with each job,

With regard to the productivity supplement, in this case, the data protection regulations do not prevent individualized access, in accordance with the public service regulations which expressly provide that the amount received by each official must of being public knowledge for the rest of the corporation's officials.

With regard to overtime pay, it can be provided in a pseudonymized way , through a separate list, replacing the first and last names of the workers with a code that does not allow them to be identified.

Barcelona on November 3, 2022

Machine Translated