

Opinion in relation to the query made by a City Council, in relation to a councilor's request for access to information on a file of the stabilization process for several called places.

Background

A letter issued by the Mayor of a City Council is submitted to the Catalan Data Protection Authority in which the Authority's opinion is requested regarding the manner in which access to a councilor should be facilitated to information on a stabilization process file.

Specifically, the City Council states that a councilor requests a copy of the documents that make up the file of the stabilization process for several places that the City Council has called. As a result of this request, the City Council is considering whether it should hand over all the documentation that is part of the file, and if all the information has to be given, whether it needs to be anonymised .

Having analyzed the query, which is not accompanied by any document, and given the current applicable regulations, and given the report of this Legal Advice, I issue the following report.

Legal Foundations

I

In accordance with article 5.o) of Law 32/2010, of October 1, of the Catalan Data Protection Authority, it is up to the Authority to provide information on the rights of people in matter of personal data processing, as well as answering the queries formulated by the entities in its scope of action on the protection of personal data held by public administrations.

Article 8.o) of Law 32/2010, of October 1, states that it is the role of the Director of the Authority to respond to inquiries made by the administrations, which must be completed by medium of the body that has its representation. Consequently, this report is issued based on the aforementioned provisions of articles 5 and 8 of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

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 City Council exposes in the consultation that a councilor asks it to deliver the following information: " *copy of the documents that make up the file of the process of stabilization of several places that the City Council has called (...)*" adds that " *This file of the stabilization process is divided into 12 " subfiles " or sections. In 1 section there is all the generic documentation and 11 sections are the specific ones for each call, which contain all the instances presented by the applicants and which are as follows:*

- 4 child educator positions (29 instances)
- 8 teacher positions in early childhood education (33 instances)
- 1 lifeguard position (2 instances)
- 4 sports monitor places (12 instances)
- 1 receptionist position (6 instances)
- 1 HR Technician position (6 instances)
- 1 Administrative/VAT position (10 instances)
- 2 administrative/VAT assistant places (10 instances)
- 3 pedestrian spaces parks and gardens (5 instances)
- 1 Parks and Gardens Official Place (4 instances)
- 1 janitor position (2 instances)

(...)"

On the occasion of this request, the City Council asks us if " *Is it necessary to hand over to him, as he requests, ALL the documentation that is part of the file? If so, it must be anonymized somehow? "* .

In this sense, 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 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.

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, body or entity of in conformity with the Law of the Union or of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation* .

The regulation and guarantee of public access to official documents 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 (henceforth, 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 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 first additional provision of the LTC, in the second section, 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* "

In the case we are dealing with, the City Council states that the person requesting the information holds the status of a councillor, which means that the provisions established by the local regime legislation, fundamentally Law 7, are applicable /1985, of April 2, regulating the bases of the local regime (hereafter, the LRBRL) and Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal Law and of the local regime of Catalonia (hereinafter, TRLMRLC) and, where appropriate, in the municipal organic regulations, without prejudice to the fact that, in everything not provided for in these regulations, the LTC is additionally applied.

III

It should be noted that this Authority has had the opportunity to analyze in previous consultations the right of access of the councilors to the information available to their corporation, necessary for the exercise of the functions that correspond to them, and which result from the application of case that is now being examined, among others, in opinions CNS 2/2021, CNS 38/2010, CNS 55/2012, CNS 13/2013, CNS 23/2013, CNS 5/2014, CNS 24/2015, CNS 50/2015, CNS 80/2016, CNS 10/2017, CNS 29/2018 , as well as in the reports IAI 48/2019, IAI 52/2019, IAI 27/2021 or IAI 36/2021 available on the website www.apd.cat .

As can be seen from these opinions, and for the purposes that are of interest in this report, it is appropriate to agree that the recognition of the right of access to municipal information is for all members of the City Council, therefore, regardless of fact that they are in the government team or in the opposition.

Thus, article 77.1 of the LRBRL establishes:

"All the members of the local Corporations have the right to obtain from the mayor or president or the Government Commission any background, data or information available to the Corporation's services and which are necessary for the development of its function. The request to exercise the right contained in the previous paragraph must be resolved motivatedly in the five natural days following the one in which it had been presented."

In the same sense, article 164.1 of the TRLMRLC is pronounced when it provides:

"1 . All members of local corporations have the right to obtain (...) all the background, data or information that is in the possession of the services of the corporation and is necessary for the development of its function."

Otherwise, it should be noted that the exercise of this right of access to municipal information is in any case subject to certain conditions provided for in the local legislation itself. Specifically, the mentioned article 164 of the TRLMRLC makes it clear that:

"2. Corporation services must provide information directly to corporation members when:

- a) Exercise delegated functions and the information refers to matters of their own responsibility.*
- b) These are matters included in the agenda of the sessions of the collegiate bodies of which they are members.*
- c) It is about access to information or documentation of the local corporation that is freely accessible to citizens.*

3. In the other cases, the request for information is understood as accepted by administrative silence if a negative resolution is not issued within four days from the date of presentation of the request. In any case, the negative decision must be motivated, and can only be based on the following assumptions:

- a) When the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's image.*
- b) When it comes to matters affected by the general legislation on official secrets or by summary secrecy."*

In addition, article 41 of the Municipal Organic Regulations of the City Council (ROM) establishes:

*" All members of the Corporation have the right to obtain from the mayor or mayoress, the local government board, the presidents/delegates of the information commissions, the councilors or councilors delegate or the presidents or presidents of the autonomous bodies municipal, the antecedents, data or information that are in the possession of the Corporation's services and are necessary for the exercise of its functions, as well as to access the administrative files, antecedents and any other type of documentation that opens in the archives and municipal offices, with the mayor or mayoress having to ensure that all councilors exercise this right.
(...)"*

It should be noted that local legislation and the jurisprudence of the Supreme Court (among others, STS of November 5, 1999) do not require councilors that, in order to access municipal information, they must explain or substantiate the purpose of their request, given that the reason for their request must be understood as implicit in the exercise of their functions that correspond to them as councilors, namely, the control and supervision of the governing bodies of the corporation, as explained in article 22.2.a) of the LRBRL.

However, it must be borne in mind that although the right of access of the members of the local corporations operates on all the background, data and information that are in the possession of the services of the corporation, these must be necessary for the development of their function. Therefore, it is important to assess whether the information to which the councilor intends to access is necessary for the performance of his duties.

On the other hand, it should also be borne in mind that the councilors' right to information is not an absolute right. If it conflicts with other rights, it is necessary to weigh the different rights at stake, in order to decide which one should prevail and to what extent.

Therefore, it is necessary to examine, the circumstances that come together in the particular case taking into account the intended purpose, if this information is necessary to achieve said purpose, the possible people affected and if it requires special protection.

IV

Having said that, the councilor requests access to the file of the stabilization process for several positions called by the City Council. Thus, access to the complete file, according to information provided by the City Council, corresponds to 27 invited places, with a total of 119 instances presented and documents provided by applicants, which amounts to approximately more than 1,500 documents. In this sense, the access would take place, with respect to the set of information and documentation generated and provided by the applicants in the processing and resolution of this procedure.

We start from this premise, for the purposes of establishing whether the right to data protection can entail a limitation to the right of access to this documentation, it would be appropriate to take into account the specific personal information included in these files.

Regarding this, given their nature, it can be understood that this file could contain, among other documents, the applicants' requests for participation; the provisional and final lists of admitted and excluded applicants; the documentation provided for the purpose of assessing the merits (services rendered, university degrees, skills in information and communication technologies, languages, etc.) the agreements adopted by the Court in the course of the process (provisional and final assessments of the merits and, if applicable, appointment proposal and the resolution or hiring agreement of the finally stabilized candidates).

of various natures: identification data, academic and professional data, employment data or, even, data deserving of special protection, either because it was provided by one of the candidates (for example, disabled, etc.) .

Thus, from the point of view of data protection, there would be no inconvenience in facilitating access to that documentation of the file of the stabilization process in question

which does not contain personal data, such as the call for the process, the information relating to the means by which publicity has been given or the criteria established to select the candidates.

On the other hand, in view of the regulatory provisions on transparency applicable to the City Council (article 3.1.a) LTC) there would be no inconvenience in facilitating the access of the person claiming to that personal information in the file that must be public

It should be borne in mind that article 9.1.e) of the LTC establishes that the calls for proposals and the results of the selective staff provision and promotion processes must be published on the transparency portal or on the corresponding electronic site. In the same sense, it is detailed in article 21 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC). And, article 10.1.b) of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia establishes that information must be disseminated by electronic media on access and staff selection.

Therefore, it would not pose any obstacle, from the point of view of data protection, to facilitate access to the identity of the people who have obtained the position, with the final score obtained and the workplace to which they remain attached.

However, with regard to the rest of the information, it is particularly important that the person requesting the information holds the status of councilor at the City Council.

From the perspective of the right of the councilor to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions, in accordance with repeated jurisprudence on this issue (SSTS September 27, 2002, June 15, 2009, among others), is part of the fundamental right to political participation enshrined in article 23.1 of the Spanish Constitution, according to which "*citizens have the right to participate in public affairs, directly or through representatives, freely chosen in periodic elections by universal suffrage*".

Therefore, it must be taken into account that the councilor's request for access to the requested information is based on the mentioned fundamental right of Article 23.1 EC, which "*para los asuntos públicos municipales se desarrolla , in one of its aspects, in article 77 of the LRBRL (...)*" (STS September 15, 1987).

It should be remembered that the local regime legislation does not require elected officials that, in order to access the information held by the corporation, they must explain or justify the purpose of their request, given that the reason for their request is 'must be understood as implicit in the exercise of the functions that correspond to them as elected officials, in the terms provided for in said local regime legislation.

In this context, the fact that as a member of the corporation can have information related to the stabilization procedure for municipal staff may be relevant for the purposes of being able to carry out control over the management carried out by the bodies responsible in this matter, especially, in order to check that the procedure in question conforms to the rules established in said process.

However, it should be borne in mind that article 5.1 of the RGPD, in addition to requiring access to occur within the framework of a legitimate, determined and explicit purpose (as

would happen in this case), also provides that personal data can only be collected to be processed, as well as subjected to this processing when they are appropriate, relevant and limited in relation to the purpose in question.

Therefore, access to the personal information of the stabilization file of municipal workers should refer, in a case like the one at hand, to the personal data that is strictly necessary to give a satisfactory response to the legitimate right exercised by the councilor.

In this sense, the councilor's access to data relating to training, professional and occupational experience and other data of interest that describe personal skills and competencies required for the development of the job offered, and which are contained in said files, would not raise problems from the point of view of the right to data protection, as it is relevant information for the purpose of verifying that the decision adopted by the body responsible for the selection of the staff conforms to the basic principles of access to public employment and is not arbitrary.

However, with regard to those personal data deserving of special protection that may be included (it cannot be ruled out that, among the information provided by candidates for a job, there may be data relating to health, ideology, trade union membership, or others from Article 9 of the RGPD, including other types of sensitive information, such as data related to gender violence), access should be limited.

Also, those identifying personal data should be omitted of candidates that are not necessary to achieve the councilor's control function (for example, ID number, telephone, address or other contact details).

On the other hand, in this file it is foreseeable that there will also be personal information referring to the people who have intervened in said procedure by reason of their position. Regarding the possibility of accessing this data, it is necessary to take into account the provisions of article 24.1 of the LTC which states that "*access must be given to public information 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 the protection of personal data or other constitutionally protected rights must prevail*".

For the purposes of what is provided for in article 24.1 of the LTC, article 70.2 of the RLTC specifies that "*merely identifying personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone number and addresses, postal and electronic, of professional contact, referring to personnel in the service of public administrations, senior positions and managerial staff of the public sector of public administrations.*"

Thus, in accordance with the above, the councilor could access the identification data of the people who have intervened in a personnel stabilization procedure due to their functions, as long as it is data that is strictly necessary for the exercise of these functions. That is to say, unless there were some exceptional circumstances for the affected person (for example, being in a situation of special vulnerability) he should be able to access the information strictly necessary to identify the person who carries out a specific administrative action. Any other personal information provided in this regard would be excessive for the purpose that justifies the access and should be omitted.

So, taking into account that the LTC allows any citizen access to this personal information, with more reason it should be possible for a councilor exercising the control functions attributed to him by the regulations.

v

Finally, it must be remembered that whenever councilors have access to personal data due to the functions entrusted to them as such, they must be governed, aside from the duty of reservation imposed by the regulations of local regime (article 164.6 TRLMRLC), by the principle of purpose limitation (article 5.1.b)) and by the principle of integrity and confidentiality (article 5.1.f)) established in the RGPD.

Thus, article 164.6 of the TRLMRLC provides:

"And the members of the corporation must respect the confidentiality of the information to which they have access by virtue of their position if the fact of publishing it could harm the interests of the local entity or third parties."

Likewise, in accordance with the principle of purpose limitation (Article 5.1.b) RGPD), as seen, any use of personal information subsequent to access by councilors should be equally based on a legitimate purpose. Otherwise, we could be faced with a treatment not adjusted to the RGPD, even though the access to personal data was initially considered legitimate.

In addition, this purpose in which the subsequent processing of personal data by councilors could be framed should not be incompatible with that which at the time would have justified the access, that is the exercise of the functions legally attributed.

For its part, in accordance with the principle of integrity and confidentiality, article 5.1.f) provides:

"Personal data will be treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal processing and against its loss, destruction or accidental damage, through the application of appropriate technical and organizational measures. "

Therefore, if the subsequent use of the information to which the councilor would have had access by reason of his position involved disclosing the personal data contained therein to third parties, without the consent of the affected person or another legal basis that empari (article 6 of the RGPD), we could also be faced with an action not adjusted to data protection regulations, even though the access was originally considered lawful.

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

Due to the information available, in the specific case examined, from the point of view of data protection regulations, it does not pose any problems to provide the councilor with access to the file of the stabilization process of municipal workers , as long as it is information strictly necessary to fulfill its functions.

However, with regard to the personal data of special protection (Article 9 of the RGPD) that may be included, it will be necessary to limit access, so that no more data is communicated than is strictly necessary to achieve the legitimate purpose that justifies access, this is the development of the functions that correspond to councilors.

In any case, once the councilor accesses the municipal information due to the legally entrusted functions, this must be governed by the duty of reservation imposed by the local regime regulations, by the principle of purpose limitation (article 5.1.b) RGPD) and the duty of integrity and confidentiality (Article 5.1.f) RGPD).

Barcelona, April 25, 2023

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