

## **Opinion in relation to the consultation formulated by the Parliament regarding certain issues related to access to personal data of officials of the Parliament of Catalonia**

A query formulated by the Parliament regarding certain issues related to access to personal data of officials of the Parliament of Catalonia is presented to the Catalan Data Protection Authority.

The APDCAT raises the following questions:

*" 1. The ACPD has issued a statement regarding the lack of individualized access to the personal remuneration data of civil servants A17 and A18 who are lawyers who do not have special responsibility, but so far there has been no pronouncement from the ACPD with respect to individual access or not to the personal remuneration data of the A17 officials who are not lawyers (heads of department). It is for the stated reasons that we ask you to tell us what you think about it.*

*2. When providing access to remuneration, should monthly and annual remuneration be provided and the different supplements and seniority specified?*

*3. You must provide individualized information on remuneration, seniority... with respect to civil servants who do NOT hold positions of special responsibility?*

*In Opinion CNS 27/2022 and in Report IAIP 1/2021 of the ACPD it is indicated that with regard to the information on the three years received with respect to civil servants who do not hold jobs of special responsibility, given that " it would be a regulated remuneration, not subject to discretionary criteria regarding its perception (...) it does not seem relevant to know the identity of specific civil servants who have received this supplement (...) it could be relevant , for the purposes of transparency, provide information on payments for this concept, broken down by levels or categories of officials, but without the need to identify or individualize this information with respect to each worker in particular."*

*4. In the previous case (officials who do NOT hold positions of special responsibility) in the event that it is considered that the information should not be provided individually, it would be appropriate to provide information on personal payments in the form aggregated, bringing together the information by groups and level intervals, without identifying or individualizing the information for each particular official?*

*5. When providing information, what must be taken into account, the position held by the official at the time of the request for access to the information or if he had previously held a position of special responsibility?*

6. *Should the tasks of the civil servants be detailed individually?*

7. *Is it against data protection regulations to describe, chronologically, specifying the dates, the administrative situation of an entire group of civil servants throughout their administrative career?*

8. *In the previous case, is the answer the same in the case of officials who occupy or have occupied positions of special responsibility?"*

Having analyzed the consultation, which is accompanied by documentation related to the consultations, in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

II

The information on which the query relates to the remuneration received by the staff in the service of the Parliament of Catalonia and aspects related to their functions is information that contains personal data in the terms of article 4.1 RGPD (all information about a natural person identified or identifiable "the interested party"; an identifiable natural person will be considered 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 several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person;".)

The communication of this information is a processing of personal data, understood as " any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2 RGPD) .

In accordance with the RGPD all data processing it must be lawful, loyal and transparent in relation to the interested party (article 5.1.a)). In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD, among which for the purposes of this opinion it is necessary to take into consideration those provided for in letters c) ( "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment") i e) ( the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;)

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of the LOPDGDD, data processing can only be considered based on the legal bases of article 6.1.c) and 6.1e) of the RGPD when so established by a rule with the rank of law.

At the same time, according to article 86 of the RGPD: *"The personal data of official documents in the possession of some 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 in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."*

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), which aims, among others, to *"regulate and guarantee people's right of access to public information and documentation"* ( article 1.1.b)), is the rule with the rank of law that enables the aforementioned data communications and establishes the terms in which they must be carried out within the framework of the RGPD.

Article 18 of the LTC establishes that *"people have the right to access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person"* (section 1).

According to article 2.b) of the LTC it is *"public information: the information prepared by the Administration and that which it has in its possession 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."*

The remuneration information of the officials of the Parliament of Catalonia as well as the information about the jobs held by these people and the tasks assigned during a certain period of time, about which the consultation is being considered, is public information for the purposes of the article 2.b) of the LTC containing personal data.

The additional provision first point two of 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 the LTC.

In accordance with the provisions of the fifth additional provision of the LTC, the Parliament of Catalonia has a specific regime for access to public information, regulated in articles 215 to 219 of the Regulations of the Parliament of Catalonia (RPC).

Article 215 of the RPC establishes that the right of access to public information may be denied or restricted if any of the causes established by the legislation on transparency, access to public information and good governance are given. In addition, the second section of this article 215 in letter f) establishes that the right of access may be denied or restricted if the knowledge or disclosure of the information entails a detriment to the protection of privacy, of other legitimate private rights and personal data.

Regarding the application of the limits to the right of access to public information, the third paragraph of article 215 establishes:

*"3. Limitations on the right of access must always be applied to the benefit of that right and cannot be extended by analogy. If the application of any of the limits affects only part of the requested information, access to the rest of the data must be authorized. Access must also be authorized if the protection of public rights and interests referred to in section 2 can be guaranteed through the removal or anonymization of sensitive data,*

*provided that the information is not denatured or becomes of difficult or equivocal understanding ."*

Therefore, access to public information available to Parliament is governed by the aforementioned articles of the RPC and additionally by the LTC. If the requested information contains personal data in addition to that established by article 215.f) RPC, that established by articles 23 and 24 of the LTC will be additionally applied as well as the rest of the criteria derived from the regulations of Data Protection.

In this context, the different issues raised in the consultation formulated by the Parliament of Catalonia will be analyzed.

### III

Regarding the first issue: "*The ACPD has issued a statement regarding the non-access to individualized personal remuneration data of officials A17 and A18 who are lawyers who have no special responsibility, but so far the ACPD has not there has been no pronouncement regarding individualized access or not to the personal remuneration data of A17 officials who are not lawyers (heads of department). It is for the stated reasons that we ask you to tell us what your opinion is in this regard.*"

Certainly, this Authority had the opportunity to analyze the access to remuneration information of personnel in the service of the Parliament of Catalonia, specifically of civil servants with level 17 onwards who had the status of senior lawyer, general secretary and auditor of accounts or that occupy positions of trust, special responsibility or high remuneration level, in CNS Opinion 27/2022. The analysis and conclusions of that opinion are applicable in order to answer the questions raised in the current consultation.

At the outset, it must be taken into account that in the cases in which the information does not contain special categories of data in the terms of article 23 LTC, access must be governed by the provisions of 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 access, especially if it has a historical, statistical purpose or scientific, 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 principle it does not seem that the information on which the query is raised should contain special categories of data in the terms of article 23 of LTC, in which case access to the information should be denied unless express consent is provided of the affected people.

It can also be ruled out that this information is limited to merely identifying data directly related to the organization and functioning of the Parliament of Catalonia in the terms established by article 24.1 LTC. Consequently, access to this information, in accordance with the provisions of article 24.2 LTC, is subject to a prior, reasoned weighting between the public interest in the disclosure of this information and the right to data protection of the officials of the Parliament about which the information is requested, taking into consideration, among others, the time elapsed, the purpose of the access, the fact that it may affect the security of people, etc.

Thus, a first element to be taken into consideration in the aforementioned weighting is that of the purpose of the access. The LTC establishes that the exercise of the right of access is not conditional on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of any rule (Article 213 RPC and Article 18 LTC), but at the same time the purpose that access must have is one of the elements to determine the existence of a public interest superior to access to information.

The purpose of the LTC, as established in its article 2.1, is to establish a system of relationship between people and the public administration and other obliged subjects, based on the knowledge of public activity, the incentive 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 public management. In this aspect of the guarantee of accountability, as set out in the Preamble of the LTC, one of the objectives of the transparency legislation is that Public Administrations must hold citizens accountable in relation, among other issues, to the management and the fate they give to public funds, such as those allocated to the remuneration received by public workers.

In this sense, and in general, the fact that access to information contributes to achieving the objectives of transparency legislation, such as facilitating knowledge of the criteria for the allocation and destination of public resources, determines the existence of a public interest in access to information.

At this point, the body in charge of responding to an access request must take into consideration the purpose that the applicant has stated in his query, such as the fact that the information is necessary for carry out their functions as a journalist.

As was made clear in CNS Opinion 27/2022, in the event that:

*"(...)who is requesting the information is a journalist who justifies the need for access in the intense media debate on the salaries and employment status of a number of Parliament workers, and who states that the request with journalistic criteria of interest and control asking for information only on those jobs that could be of public interest".*

*The European Court of Human Rights, in relation to the right to freedom of expression, which includes the right to receive or communicate information and ideas (Article 10 of*

*the European Convention on Human Rights), recognizes the special position of journalists and media - and also other applicants for public information, such as non-governmental organizations, researchers or activists - since they carry out an action, as "watchdogs", which contributes to the 'exercise of the right to give and receive information and, ultimately, to public debate (SSTEDH Bladet Tromso v. Norway (May 20, 1999), Rosianu v. Romania (June 24, 2014), or Magyar Helsinki Bizottsag v. Hungary (8 November 2016), among many others).*

*Taking into account the regulatory framework (art. 20.1.d) EC, and art. 10 CEDH), and the jurisprudence, it is made clear that journalists -among other professionals and collectives- would have a prominent role in contributing to the formation of free public opinion. In this sense, the status of journalist of the person requesting access to public information could be an element favorable to access to be taken into account - although not in isolation but together with other elements -, in effects of making a weighting between the public interest in obtaining the information and the rights of the people affected.*

*In short, the fact that the person requesting the information is a journalist can be an element favorable to access, to be taken into account in the weighting of rights to the extent that the information requested refers to matters of general interest or of outstanding public relevance for the matter it deals with, (...)"*

Therefore, the body that must decide on access must take into account in the weighting of rights if the reasons that would justify access are indicated in the requests, and therefore, the weighting will be different in each case based on these circumstances.

Another element to consider in the weighting is the type of information requested. Thus, in general, there is no doubt about the prevalence of the public interest in access when it comes to information on which the transparency regulations have provided for active publication obligations, in this regard CNS Opinion 27/2022 stated:

*"Regarding the remuneration of the personnel in the service of the Parliament, article 211 of the RPC provides that the Parliament must make public, among others, the information on "the staff, the list of jobs and the remuneration system of the personnel in the service of the Parliament, including senior officials" (art. 211.2.b).*

*This forecast does not result in a direct obligation to publish the information that is the subject of this query. But yes, the information relating to the remuneration system of the staff in the service of the Parliament.*

*This Authority has repeatedly made clear (IAI 3/2019, IAI 33/2019, IAI 44/2019, IAI 1/2020, or IAI 1/2021) that in the case of exercising the right of access to the remuneration received by personnel in the service of the Administration, **apart from the high-ranking officials and managers in respect of which article 11.1.b) LTC establishes active publicity, the public interest must also prevail in access in the case of personnel who occupy positions of special trust, of special responsibility within the organization or at a high level in the entity's hierarchy, of free appointment, or that involve a high level of remuneration .***

*Although the law does not expressly provide for the publication on the transparency portal of the remuneration of this type of public employee, in the weighting of the rights that*

*must be done with respect to requests for access to information, that is in what we could call a public interest test that must determine if access to information contributes to a better knowledge of the criteria for organization and operation and how public resources are allocated and if, for this reason, must prevail before the right to the protection of personal data, the weighting should be decided in favor of access.*

*This makes it possible to answer the third of the questions raised regarding whether access should be given to a list with the identification of officials from level 17 onwards who have held the positions of lawyer and comptroller from 2008 to the present, with the details of all their remunerations including those of a personal nature such as the three-year ones.*

*At the outset, it is clear that having individualized information on the full remuneration received over a period as long as the one requested allows obtaining not only information on current income but also, with respect to those people who have been working for many years hold one of these jobs, it provides a picture or profile of income earned over a long period of time. The consequences that can have for a person when the knowledge of their financial capacity by third parties is something that needs to be assessed.*

*On the other hand, it is also necessary to assess the public interest in access. To the extent that we are dealing with information about officials who are neither high-ranking officials nor managerial staff, it will be necessary to analyze whether it is staff who occupy positions of special trust or special responsibility within the organization, positions of free appointment (or that involve a certain margin of discretion in terms of their provision), or that involve a high level of remuneration.*

*For this purpose, it will be necessary to analyze both the provisions contained in the RPC, as well as in the Statutes of the internal regime and government of the Parliament of Catalonia (ERGI) and the criteria established by the governing bodies of the Parliament, specifically the document "Remuneration regime for personnel in the service of the Parliament of Catalonia", published in the transparency section of the Parliament <https://www.parlament.cat/document/intrade/173866>*

*In this document on the remunerative regime for the staff in the service of the Parliament it is established that "in application of the principle of organizational and budgetary autonomy of the Parliament of Catalonia and attention to the specialization and peculiarities of the organization of work in the "in the parliamentary sphere, civil servants in the service of the Parliamentary Administration are subject to a specific remuneration regime, as are all legislative assemblies as an expression of the democratic principle of separation of powers".*

*According to this document, civil servants at level 17 onwards are included in group A1, with regard to which the document distinguishes three types of salaries:*

- "a) the one corresponding to the general secretary and the lawyer;*
- b) the one corresponding to lawyers and the auditor, who perform functions of superior advice with respect to the exercise of the functions that the Statute entrusts to Parliament, and*
- c) the one corresponding to other officials who are required to have a degree."*

*In the definition of the specific complements, it is established, with regard to the complementary remunerations, "(...) The jobs of the Parliament, depending on their level of responsibility, technical complexity and command, have been homogenized, without prejudice to the establishment of a list of levels according to the types of officials by reason of the qualification group and professional category and job. These levels range from 3 to 20. Among the civil servants of the A1 group, this specific complement ranges from level 13 to 20. In this group you can find the lawyers, the hearing officer, the linguists, the journalists, the archivists, the treasurer, the architect, and a series of senior technicians from the Parliamentary Administration. In accordance with articles 2 and 12 of the ERGI, in the case of some legal positions, a supplement may be applied to the specific supplement that belongs to the specialized legal advice, command or superior management, and that in the remuneration table they are indicated with the expressions dir (director) and sg (general secretary). Likewise, the position of treasurer has a specific supplement differentiated in attention to the special accounting responsibility to which it is subjected and is indicated with the expression three."*

*At the outset, it can be considered that in accordance with the remuneration table published for the year 2022 in the document "Remuneration scheme for personnel serving the Parliament of Catalonia", the positions on which access to the information is requested (level 17 onwards) can be considered as having a high remuneration level, as they are the significantly higher positions in the remuneration table approved by the Bureau of the Parliament. We would reach the same conclusion by comparing the corresponding remunerations in the area of the Administration of the Generalitat.*

*(...)*

*Consequently, given these characteristics, the list with identification of the civil servants who hold or have held the positions of general secretary of Parliament, chief legal officer and auditor of accounts must be provided with an indication of their remuneration, including the three-year terms, during the time period to which the query refers.*

*With regard to the rest of level 17 civil servants who are lawyers or auditors, insofar as these are positions with a high level of remuneration, it will be necessary to provide access to their remuneration information with identification of the persons, whenever available, in addition, the aforementioned requirements, that is to say that they are command positions or positions of special responsibility within the organization, whose appointment is made by free appointment or by procedures that entail a certain discretion, of in accordance with the provisions of the RLT and the ERGI."*

*In CNS Opinion 27/2022, an analysis is also carried out of how to assess whether the workplaces are "places of special trust, of special responsibility within the organization or of a high level in the entity's hierarchy, of free appointment, or that involve a high level of remuneration."*

*In this regard, it should be noted that the key idea is that these are positions of special trust, of special responsibility within the organization or of high retributive level, these are attributes that must be assessed jointly and not isolated, that is to say, the mere fact of having a high remuneration level, for example, is not sufficient to consider that the public interest prevails in access to information but that this element, together with the rest, are those that determine this prevalence. Thus the CNS Opinion 27/2022 highlighted:*



*"It should be specified that the different situations relating to the special responsibility of the workplace, the special trust, the fact that these are freely appointed positions, which involve a certain margin of discretion in terms of their provision or that entail a high level of remuneration are aspects that the body that must decide on access must assess jointly and not in isolation and that this joint assessment will lead to determining the public interest in knowing the remuneration of these positions of work*

*It is not easy to establish general criteria that are valid for all public entities to define that a job is of special responsibility since in each case it will depend on the legal regime applicable to the personnel who make up it and on the internal organizational structure of the entity*

*In fact, for example, the same EBEP, in its article 80, establishes with regard to career civil servants, that "The civil service laws that are issued in implementation of this Statute must establish the criteria to determine the positions that, due to their special responsibility and trust, can be filled by the procedure of free appointment with public call."*

*In the case of civil servants, the criteria for determining that a position is of special responsibility or trust are set by the different public administrations. **In any case, however, career civil servants who occupy jobs that have been covered by the free appointment procedure will implicitly carry their classification as of special responsibility or trust.***

*Likewise, in the case of temporary staff, the consideration as a position of trust is implicit in its own legal configuration which derives from article 12 of the EBEP which defines it as "the one who, by virtue of appointment and with non-permanent character, only performs functions expressly qualified as trust or special advice; it is remunerated against the budget appropriations set aside for this purpose" and, therefore, no doubt can be raised by the body that must make the judgment of the public interest, about access to the remuneration information of this staff.*

*Similarly, this category will also include both managerial positions and labor personnel who are bound by a senior management contract.*

*With regard to the rest of the jobs, the entities that make up the public sector have their own job classifications based on which the levels and the associated remuneration are attributed according to qualification criteria, specialization, responsibility, competence, command, etc. For example, civil servants are classified in bodies, scales and levels (in the case of the Parliament in 20 levels) that respond to an assessment of each job, given the criteria of qualification, specialization, responsibility, competence and command functions. Higher levels are assigned higher pay. It is clear that the prevalence of the public interest in the disclosure of information decreases as the hierarchical level of public employees decreases.*

***In general, the criteria that can be applied to consider that a position is of special responsibility are, in addition to the form of provision (free appointment, systems with a margin of discretion of the body that appoints it), the fact that it is a question of command positions , that the retention of accounts of their activity (office of affairs) is***

*done directly with the management bodies or of parliamentary appointment , **the greater degree of participation in the decision-making of the organization in the which they are linked to, together with the fact that they correspond to positions with a high retributive level within the scale in which they are integrated.***

*To determine whether a job has a high level of remuneration, the remuneration established for the different jobs within the public entity where it is located must be taken into consideration. Thus, taking into account the remuneration tables attached to the consultation, it seems that in the case of the civil servants of the Parliament of Catalonia this could correspond to levels 17 to 20.*

*In any case, as has already been pointed out, and as will be developed below, the decision on the possibility of giving access to the full remuneration of the staff in the service of the Parliament must be made taking into account not only, so in isolation, the level of remuneration, but also taking into account the rest of the criteria relating to the special responsibility or the character of a position of trust, issues regarding which it is the Parliament of Catalonia itself that has the most precise information to be able to value it."*

In this context, the determination of the public interest in the individualized access to the remuneration data of the A17 civil servants who are not lawyers, on which the consultation is carried out, goes through a reasoned weighting of the different elements exposed, which must carry out the body in charge of deciding on access, taking into account the specific circumstances of each access request.

In any case, with regard to the consideration of these positions as of special trust, of special responsibility within the organization or of high retributive level , it should be taken into consideration that as established in article 17.2 of the ERGI " *The directors and heads of department are appointed freely by the Bureau of the Parliament at the proposal of the secretary general*" . As stated in the transcribed Decree CNS 27/2022, the career civil servants who occupy jobs that have been covered by the free appointment procedure, in principle, will implicitly carry their classification as of special responsibility or trust . However, the criterion of free appointment is not an absolute criterion, since in the framework of the public service there are positions that are covered by the system of free appointment and not by competition and that, despite the application of this system of provision, would not automatically imply the special responsibility or trust in terms of transparency. For this reason, it must be in the joint assessment of all the elements to be weighed, such as the associated functions and the remuneration level.

Thus, article 17 of the ERGI in its point 1, establishes that " *The direction of the management centers corresponds to the directors or department heads. Lawyers or other officials who belong to group A (subgroup A1) and who meet the requirements established in the list of jobs can occupy these positions* . Therefore, it is it deals with positions that may also have associated managerial functions.

Finally and with regard to the remuneration level, in the analysis carried out by CNS Opinion 27/2022 it was also concluded that the jobs corresponding to civil servants at level A17 onwards could be considered as having a high remuneration level, although this assessment "must be done in the comparative environment of the remuneration tables of the corresponding entity (" *To determine if a job has a high remuneration level, the remunerations established for the different jobs within the "public entity where it is located.*

*Thus, taking into account the remuneration tables that are attached to the consultation, it seems that in the case of the civil servants of the Parliament of Catalonia this could correspond to levels 17 to 20").*

In short, with the information available, it could be understood that the jobs of A17 officials who are not lawyers (heads of department) can be considered positions of special trust, of special responsibility within the organization or of high retributive level. Regarding these, as this Authority has repeatedly highlighted, the knowledge of their remuneration can be relevant for the control of the use of public resources, so the result would be the prevalence of the public interest in the access to their remuneration.

All this, without prejudice to the fact that this criterion may vary as a result of a weighting carried out in accordance with the aforementioned criteria, as well as the result of the hearing that may be held with the affected persons in accordance with the provisions of article 31 of LTC according to which *"if the request for public information may affect the rights or interests of third parties, in accordance with the provisions of this law, in the event that the potential affected are identified or are easily identifiable they must be forwarded the request, and they have a period of ten days to present allegations if these can be decisive for the meaning of the resolution"*, in the event that they can allege specific effects on their rights that can modify this weighting. In this sense, it should be remembered that the mere refusal would not be sufficient to deny access since the reasons that would justify the impact on their rights must be sufficiently justified.

#### IV

Next, the second, third and fourth questions asked will be analyzed, that is, on whether when giving access to remuneration, monthly and annual remuneration must be provided and specify the different supplements and seniority, if this individualized information it must be provided on civil servants who do not hold positions of special responsibility and, in the event that it is considered that the information should not be provided on an individual basis, if it would be relevant to provide information on the personal payments of aggregate form, bringing together the information by groups and level intervals.

As set out in the basis III of this opinion, access to individualized information on the remuneration of public workers must, in principle, be limited to high-ranking and managerial staff as well as to staff who hold positions of 'special trust, of special responsibility within the organization or of a high level in the entity's hierarchy, of free appointment, or that involve a high level of remuneration .

With respect to these, information must be provided on all remuneration concepts (basic remuneration, supplements and three years).

In relation to whether the information must be calculated monthly or annually, it should be remembered that article 31 of the RLTC establishes, with regard to the active advertising of the remuneration of senior officials, that this information refers to annual remuneration. Thus it establishes:

- 1. For the purposes of letter b) of article 11.1 of Law 19/2014, of 29 December, both the annual remuneration must be made public, with identification of the name, surname and*

*position, on a monthly basis of the senior positions of the public administrations and of the management staff of the entities of the public sectors of these, in accordance with the remuneration tables of the current year, such as the compensations and per diems that they have effectively received.*

*2. The information relating to variable remuneration must be published, first as the maximum expected in relation to the current financial year, and subsequently, once the financial year is closed, with an indication of the amounts actually received for this concept .*

*3. For the purposes of this precept, indemnification when ceasing to exercise the position is understood to mean the amounts received for cessation in the exercise of the position or for termination of the employment relationship, and is understood as per diem and other indemnities the amounts received referred to in article 25.1, letters b) and c), of this decree.*

In the case of the right of access to information, the requested information must be delivered, in principle in the format and in the terms in which the request was made.

However, facilitating monthly calculation of remuneration, from the point of view of data protection regulations, may be more intrusive for the privacy of the persons affected and may lead to biased profiles of remuneration (for example matching an exceptional situation that has led to the payment of indemnities due to service that are not usual). For this reason, it is considered more respectful of the data protection of the affected persons to provide this information on an annual basis.

With respect to the rest of public workers, it is a criterion reiterated by this Authority (IAI 39/2022, IAI 81/2022) that, in principle, the public interest in the control of public activity with regard to the destination of resources is could also satisfy without sacrificing the privacy of the affected persons in such a way that the information must be provided aggregated by groups and level intervals .

In this sense, it must be taken into account that with respect to the obligations of active advertising of information on remuneration, compensation and allowances perceived by public employees, article 25 of Decree 8/2021, of February 9, on transparency and the right of access to public information, establishes:

*1. For the purposes of letter e) of article 11.1 of Law 19/2014, of December 29, 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.  
(...)"*

With regard to personal remuneration such as those corresponding to the seniority of the people who hold jobs in these categories, as indicated in the IAIP report 1/2021, issued by this Authority, this information is it must facilitate, in principle, grouped by categories or according to the different types of jobs. Thus, the report stated:

*"On the other hand, with regard to other personnel in which these circumstances do not occur, in principle, given that these would be jobs included in the LRT with a lower level of responsibility than the previous ones, and consequently, with a lower retributive level, the evaluation of the use of public resources can be done by having information on the three years grouped by category or according to the different types of jobs.*

*For this reason, it does not seem to be justified to provide access in an individualized way to the remuneration received in terms of three years for each specific official, beyond the possibility of providing information on remuneration grouped by category or according to the different types of jobs , given that these alternatives allow an evaluation of the use of public resources without unnecessarily sacrificing the right to data protection of the people affected. It should be borne in mind that the purpose of the transparency legislation in this case should not be to allow a control of a worker's income, but the efficient use of public resources".*

In short, as pointed out in the consultation, it would be in line with the data protection regulations to provide information on the remuneration corresponding to the three years of public workers grouped by category or by groups and level intervals.

v

The fifth question is whether, when providing the information, the position held by the official at the time of the request for access to the information must be taken into account, or whether he previously held a position special responsibility

The answer to this question will depend on the terms in which the query has been formulated by the person requesting access. If the request is about the remuneration received during a certain period of time by the people who have occupied certain positions relative to high positions, managerial staff or personnel who occupy positions of special trust, of special responsibility within the organization or of a high level in the organization's hierarchy, of free appointment, or that entail a high level of remuneration , the answer must take into account all officials who have held those positions of management or of special responsibility during the requested time period.

On the possibility of providing the remuneration information of the workers during a certain period of time in the Opinion CNS 27/2022 it was indicated that:

*"Without prejudice to the fact that for the purposes of active advertising a publication period of five years has been established, the right of access to public information is not limited in time.*

*However, article 24.2 of the LTC establishes that the elapsed time is one of the elements to be taken into consideration in the previous reasoned weighing of the public interest in the disclosure and the rights of the affected persons.*

*From the point of view of data protection regulations, the fact that information has been requested since 2008 has implications to the extent that it will affect not only the people who currently hold the jobs on which Request information but to all those who have occupied them since 2008.*

*In addition, with respect to those who occupy the positions at present and who have been occupying them for a long period of time, it allows to obtain a more complete profile by offering an image of their economic capacity over time.*

*However, in this case the temporal scope of the information is not, in principle, an element that should restrict the right of access.*

*In fact, for people who no longer hold these jobs, the passage of time means that the impact on the right to data protection is less, since generally the passage of time weakens the effects of diffusion of the personal information of those affected. And with regard to the people who have been occupying one of these positions for a long period of time, although it is true that it is more intrusive, we must not forget that the publication of the remuneration tables, together with the relevance of his appointment, it would also allow us to obtain a certain profile (although perhaps not entirely accurate) of his economic capacity, so the consequences would not be significant."*

However, if the access request is for information on the remuneration of the people who hold certain jobs at the time of making the request, it must be taken into account when providing the information only to the people who occupy those positions at the time of the request.

In any case, it must be borne in mind that the purpose of the transparency regulations is "to establish a system of relations between the people and the public administration and the other obliged subjects, based on the knowledge of the public activity, the incentive of the 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 words, the purpose of participation is to offer citizens tools for monitoring the actions of public authorities, with a clear delimitation between public actions and the possible persecution of specific people.

## VI

Finally, in response to questions 6, 7 and 8 relating to whether the tasks of the civil servants should be detailed individually, if it contravenes data protection regulations, describe, chronologically, specifying the dates, the administrative situation of an entire group of civil servants throughout their administrative career, and if, in this case, the answer is the same

in the case of civil servants who occupy or have occupied positions of special responsibility, the considerations set out below .

At the outset, the functions corresponding to each workplace are described in the workplace relationships that must be approved by public entities. In the case of the Parliament, article 46.2 of the Statutes of the internal regime and government of the Parliament of Catalonia (ERGI), establishes:

*"The list of jobs includes all the jobs of the Administration parliamentary, with the following content:*

- a) The name and characteristics of the jobs.*
- b) The requirements to occupy the jobs.*
- c) The assignment to the body, scale or subscale that corresponds.*
- d) **The functions corresponding to each job.***
- e) The form of provision and the access system for the cases regulated by article 52.3.*
- f) The requirements that the officials of another administration must fulfill for a to access jobs through the corresponding provision call."*

In accordance with article 211.2. b) of the RPC in application of the principle of transparency, the Parliament must make public, among other information, the workforce and the list of jobs.

Therefore, information about the tasks or functions corresponding to each job is information that must be actively advertised.

However, the list of jobs does not include personal information or identifying data of the specific people who occupy the jobs that compose it.

In any case, with regard to the possibility of facilitating access to the details of the individualized tasks of specific officials, it should be remembered that article 24.1 of LTC establishes that 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 the protection of personal data or other constitutionally protected rights must prevail.

In this regard, article 70.2 of the RLTC establishes that the functions carried out by staff in the service of public administrations can be considered as merely identifying personal data for the purposes of article 24.1 of the LTC. Specifically, article 70.2 of the RLTC establishes:

*"(...)*

*For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone number are purely identifying **personal** data and the addresses, postal and electronic, of professional contact, referred to the staff in the service of the public administrations, senior positions and managerial staff of the public sector of the public administrations.*

*In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature. If the signature is electronic, the electronically signed document must be published in such*

*a way that the properties of the electronic certificate used for the signature cannot be accessed.*

*The location data must be deleted in the event that it is not merely identifying data of the author in his position or staff in the service of the public administrations.  
(...)"*

As established in Article 24.1 LTC, access to this information could only be denied when, exceptionally, the right to data protection or other constitutionally protected rights that the affected persons could claim against access to your data.

Therefore, it would not be contrary to data protection regulations to facilitate access to merely identifying data related to the organization, operation or public activity of the Public Administration consisting of the name and specific functions of the site of work carried out by certain public workers as long as the protection of their right to data protection or other fundamental rights, which must be duly justified, does not prevail in the specific case.

It would be a different matter to provide information related to the description, chronologically (specifying the dates) of the administrative situation of an entire group of civil servants throughout their administrative career.

According to article 67 of the ERGI, the administrative situations of parliament officials are:

- "a) Active service.*
- b) Special services.*
- c) Voluntary leave.*
- d) Suspension of employment."*

The description of administrative situations is regulated in articles 68 to 70 of the ERGI. Each of these situations is justified by certain circumstances that may come together so that they are declared, as an example:

- active service situations may result in the official being on leave, on leave with job reservation, or on commission, among others.
- special services, civil servants may be in a situation of special services for having acquired the status of civil servants in the service of international or supranational organizations, for having been appointed to occupy political positions or positions of trust in any public administration, or for having been designated by the General Courts to form part of the constitutional bodies, among others.
- the situation of voluntary leave may be justified, among others, to take care of a son or daughter, to take care of a relative up to the second degree of consanguinity or affinity or, for other circumstances such as violence of gender
- the suspension of an official's employment is the administrative situation in which the official who has been sanctioned following the investigation of a disciplinary file or a judicial procedure is declared, and means the temporary deprivation of the exercise of his functions



Therefore, at the outset some of the circumstances that justify the officials being in any of these situations, would lead to revealing information that could affect special categories of data under the terms of article 23 of LTC, in which case access to the information should be denied. It should be remembered that, with regard to administrative sanctions, access to information about them must be denied unless they entail a public reprimand to the offender.

Nor can it be ruled out that, in the event that information on the administrative situation of a collective is facilitated for a period of time excluding information on employment suspensions (which is based on an administrative or criminal sanction) could lead, in the opposite sense or indirectly to allow identifying these situations with respect to the people affected.

In any case, from the point of view of the weighting of rights in Article 24.2 to provide this information in a general manner with respect to a group of officials and during a certain period of time (although the reasons are not provided that have justified the administrative situation), could have a clear interference in the privacy of these people that does not seem, in principle, justified in the public interest in its disclosure, since as has been explained the transparency regulations have for object the control of the action of the administration and not the specific control of the people.

In general, it also does not seem justified to provide this information regarding all the managerial staff or people who occupy positions of special responsibility within the organization.

All this, without prejudice to the weighting that the body that must decide on access must carry out taking into consideration all the circumstances referred to in article 24.2 LTC, in each specific case, as well as the limits that they may derive from article 23 LTC, or from the possible disclosure of particularly sensitive data that carries risk for people, such as for example those derived from situations of gender violence.

## **Conclusion or**

1. With the available information it can be concluded that the jobs of A17 officials who are not lawyers (heads of department) can be considered positions of special trust, of special responsibility within the organization or of high remuneration level. Consequently, the knowledge of their remuneration may be relevant for the control of the use of public resources, so the public interest would prevail in access to their remuneration, unless these justified the prevalence of their right to data protection.

2. In response to questions 3, 4 and 5, access to individualized information on the remuneration of public workers must, in principle, be limited to high-ranking and managerial staff as well as staff holding positions of special trust, of special responsibility within the organization or of a high level in the entity's hierarchy, of free appointment, or that entail a high level of remuneration. With respect to these, information must be provided on all remuneration concepts (basic remuneration, supplements and three years). It is considered

more respectful with the protection of personal data to provide this information on an annual basis.

With respect to the rest of public workers, the public interest in the control of public activity in terms of the destination of resources could equally be satisfied without sacrificing the privacy of the affected persons in such a way that the information must be provided aggregated by groups and level intervals.

With regard to the three years of this worker, it would be in line with data protection regulations to provide information grouped by category or by groups and level intervals.

3. In response to the fifth question, if the request is about the remuneration received during a certain period of time by the people who have occupied certain positions related to high positions, managerial staff or personnel who occupy positions of special trust, of special responsibility within the organization or of a high level in the entity's hierarchy, of free appointment, or that entail a high level of remuneration, the answer must take into account all officials who have occupied those positions management work or special responsibility during the requested period of time.

4. With regard to the sixth question, it would not be contrary to data protection regulations to facilitate access to merely identifying data related to the organization, operation or public activity of the Public Administration consisting of the name and the specific functions of the job carried out by certain public workers provided that, in the specific case, the protection of their right to data protection or other fundamental rights does not prevail, which must be duly justified.

In general, it is not considered appropriate to the data protection regulations to provide information related to the description, in chronological form, of the administrative situation of an entire group of civil servants throughout their administrative career, whether they are personnel manager or of special responsibility as it affects other groups of officials.

Barcelona, May 8, 2023