

Legal report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim of a representative of the workers against a public entity in the field of health for the denial of access to information on remuneration and identification of specific people

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 by a representative of the workers against a public entity in the area of health (hereinafter, the entity), for the denial of access to information on remuneration and identification of specific people.

According to the applicant himself, the entity would have given him the requested information in a pseudonymised form .

The request, which is accompanied by a copy of the administrative file processed before the GAIP, has been analysed, and in accordance with the report of the Legal Counsel, the following report is issued.

Background

1. On October 14, 2022, the applicant submits a request to the entity, requesting access to the following public information:

" 1. The supplementary payments for continued care for extraordinary services received in the years 2021 and 2022, with an indication of the name and code of the job or position held - as stated in the General Personnel Register of the Generalitat de Catalunya -, the date of creation of the job - as recorded in the General Personnel Register of the Generalitat de Catalunya - and the names and surnames of the persons listed under pseudonyms with the codes 1869, 61 and 2470 in the GAIP Resolution information delivery (...) that was notified to me by electronic notification (...)"

2. That in the event that it is agreed that it is not appropriate to provide me with the requested public information, I will be notified with reasons in order to, if necessary, claim before the Commission for the Guarantee of the Right of Access to Information Public (GAIP)."

2. The file contains the entity's Resolution of November 14, in which the right of access to public information is partially recognized, specifically:

"(...) the right to obtain the total amounts received in terms of continued care for extraordinary services corresponding to the period between September 1 and December 31, 2021 by the three anonymized professionals with the codes 1869, 61 and 2470 in the execution of

Resolution 742/2021 of the GAIP, as well as those accrued for this same remuneration concept by these three professionals from January 1, 2022 to October 14, 2022, dismissing the claim of the applicant with regard to obtaining the identification of the three professionals receiving these amounts, as well as the name, code, and date of creation of the positions they occupy."

3. It is stated in the file that on November 14, 2022, the applicant filed a claim with the GAIP, in which he states that the entity would have partially provided him with the requested information, and requests to know the "*Remuneration and identification of specific people who appear pseudonymized in the delivery of information GAIP Resolution 742/2021*".

4. On November 18, 2022, the GAIP informs the entity of the claim submitted, and requests the issuance of a report, the complete file relating to the request for access to public information, and the identification of the third parties affected by the access that is claimed, if any.

5. On December 2, 2022, the entity sends to the GAIP the required report, the complete file relating to the request for access to public information, as well as the identification of the three people who are affected for the request.

6. On January 4, 2023, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

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 (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 processing of personal data (hereafter, RGPD).

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

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

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

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

II

According to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), personal data is: "all information about a 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; (art. 4.1 RGPD).

Therefore, the processing of personal data (art. 4.2 RGPD) that may be included in the requested information, specifically, the information relating to the remuneration and identification of three specific people who appear pseudonymized in the delivery of information that, for the available information, already provided by the entity following Resolution ..., of the GAIP, is subject to the principles and guarantees of the personal data protection regulations (RGPD).

According to article 86 of the RGPD:

"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 in accordance with the Law of the Union or of the Member States that apply it 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 29 December 2014, on transparency, access to information and good governance (LT), aims to regulate and guarantee the transparency of public activity.

Article 18 of Law 19/2014 establishes that *"people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted"* (section 1).

The mentioned article 2.b) defines public information as *"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 which they supply the other obliged subjects in accordance with the provisions of this law"*.

Law 19/2013 is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information).

The information related to the remuneration received by public workers, in this case, from the entity, is "public information" subject to the access regime provided for in the transparency legislation.

However, in accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically and with regard to information that contains personal data, it is necessary to assess whether the right to data protection of the affected persons can justify or not the limitation of the right of access to public information regulated in the LTC that invokes the person claiming

III

The object of the claim is to obtain complementary information to that which, according to the available information, the entity would have already given to the interested person as a result of a previous request, in relation to which the GAIP issued the Resolution (...).

The claimant, who according to the available information is a representative of the workers in the scope of the entity, states in his written request for access that he wants to know the *"remuneration and identification of specific persons who appear pseudonymized in the delivery information Resolution GAIP ..."*

According to the claimant's letter, the entity would have given him the document *"diet allowances and complementary remuneration 2019-2021"* and, following the analysis of the information given, it would have found that three workers, each identified with a code, would have received a specific remuneration, in the form of "extraordinary services" (continued attention extraordinary services), for each of the three years requested (2019 to 2021). According to the information available, the aforementioned document would include, for each of the workers, the figure in euros received for each year (2019 to 2021).

In his letter addressed to the GAIP, the claimant argues that in accordance with the regulations, gratuities for extraordinary services are of an exceptional nature, they can only be recognized for extraordinary services rendered outside the normal working day and "they cannot have, in in no case, a fixed amount or periodic gain."

According to the claimant in the same letter, "from the analyzed information it appears that the amounts received by the people with the indicated codes (...), have become a periodic and fixed gain, contrary to all the aforementioned regulations."

To this the claimant adds that "there are other personnel who also provide extraordinary services outside the normal working day but never receive the continuing care supplement for extraordinary services (...) having the same right to receive it. "

According to the claimant, in equivalent situations the administration would be acting in a divergent manner, making debatable use of its discretion in granting this supplement, and for this reason he states that: "it is in my interest to know the identity of the people who yes

being aware, at least until 2021, of the amounts indicated in the second section of these antecedents, as well as the motivation for which they are being paid, in order to control the discretion in granting the aforementioned supplement, since in moreover, these amounts are becoming periodic and systematic, and perhaps, even, what should be analyzed is whether the specific complement and/or destination of the jobs occupied by these people should be modified.”

IV

The first additional provision of the LTC states in section 2 that *"Access to public information in subjects that have established a special access regime is regulated by their specific regulations and, additionally, by this law ."*

It is necessary to start from the basis that the specific regulations provide that the representatives of the workers must be able to access certain information for the development of their functions of negotiation and defense of the rights of the workers, including certain information on retributive matters (art. 40.1 Royal Decree Legislative Decree 5/2015, which approves the revised text of the Law on the Basic Statute of the Public Employee -TRLEBEP-, article 64 Workers' Statute, as well as, in the case at hand, article 80 of the Framework Statute of Statutory Personnel of health services - Law 55/2003-, to which we refer).

As this Authority agreed in Report IAI 42/2021 (FJ III), it does not appear that the aforementioned regulations allow the communication of the requested information with the degree of detail and linkage with affected persons in the terms that the claimant asks to know, in the case at hand, the specific identity of the people who receive certain payments.

In any case, the possible limitation of access to the information requested by way of the regulations that regulate the right of the workers' representative bodies to information on remuneration matters, this does not prevent it from being necessary to examine the possibility of communicating this information based on the provisions of the transparency legislation.

Data referring to remuneration supplements received by certain workers, in principle would not be particularly protected data under the terms of article 23 LTC, so the criteria of article 24.2 LTC will have to be taken into account:

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

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

One of the objectives of the transparency legislation (art. 1.2 LTC) is that Public Administrations must be accountable to citizens, in relation, among other issues, to the management and destination that they give to public funds, such as those allocated to the remuneration received by public sector workers. Thus, the transparency legislation provides citizens with the ability to control public funds, in short, to monitor the use of public money, as set out in the Preamble of the LTC.

If citizens must be able to have this ability to control and hold public administrations to account, with more reason, if applicable, it will be necessary to recognize this ability to the workers' representatives, as in the case at hand, given the information available, in relation to with the information that may be relevant for the development of its functions.

In any case, access to the requested information is subject to a prior, reasoned weighing between the public interest in disclosure and the right of the three affected persons, in this case.

v

As stated by the entity in its report issued at the request of the GAIP, "the three professionals who receive continuous care for extraordinary services identified with the three required codes are not included in any of the categories established in relation to which primary necessarily the public interest in access to information about the specific remuneration they receive, since they are neither management personnel of the entity nor temporary personnel of trust, nor do they occupy positions of free appointment with a high level of the scale of official levels (...)."

The same report adds that "They are not jobs with a high level of responsibility and autonomy in decision-making, nor provided with a considerable degree of discretion that justifies the existence of a special relationship of trust, but rather it deals with jobs that are not assigned a high level in the relationship of jobs of the entity and that are provided by regulated mechanisms and that do not involve a relationship of special trust".

As this Authority has decided on different occasions (IAI 3/2019, IAI 33/2019; IAI 1/2020, IAI 1/2021, or IAI 42/2021, among others), the transparency obligations of the LTC , with respect to the remuneration of senior positions and managerial staff (eg art. 11.1.b) LTC and 31 Decree 8/2021), can be extended with respect to requests for access to information that affect staff who occupy positions of free appointment, or that involve a high level of remuneration. This criterion should also be taken into account in relation to sites that involve a certain margin of discretion in terms of their provision.

From the information contained in the file, it is not possible to verify whether the three affected workplaces actually have any of the aforementioned characteristics, which could lead, given the aforementioned transparency obligations, to having to provide the information in the terms that only The claimant requests (individualized information on the remuneration of these three workers, together with their identification).

Having said that, in the event that the affected workers do not belong, as the entity's report points out, to these groups (senior positions, managerial staff, etc.), it will be necessary to take into account the provisions of article 11.1.e) LTC, according to which:

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

This Authority has maintained that, in accordance with the transparency legislation (art. 11.1.e) LTC, and art. 25.2 RLTC), with respect to this staff, the individual disclosure of the remuneration received is not considered justified in principle.

According to article 18.2 LTC, the right of access does not require citizens to state the specific reasons for which they want to access public information, but these may be relevant when deciding on the prevalence between one and the other rights (public interest in disclosure or rights of affected persons). In fact, it must be remembered that the purpose is one of the weighting criteria provided for in the same law (art. 24.2.b) LTC).

As has been pointed out, the claimant considers that a debatable use of discretion would have been made in the granting of gratuities for extraordinary services, and for this reason, he demands to know the identity of the three people affected. Thus, in the letter of claim presented to the GAIP, on November 14, it states that:

"The intention is to control the excessive amounts of remuneration paid in terms of extraordinary gratification to three specific professionals, for whom the concept of continued care for extraordinary services has become a fixed gain (which does not mean the same exact amount) and periodical (year after year they are perceiving it) and with quantities exorbitant and increasing, according to the analysis of the information provided by (the entity) in agreement with resolution 742/2021 of the GAIP. Its identification, together with the access already estimated (additional remunerations for continued care for extraordinary services received in the years 2021 and 2022) can allow to review, monitor and control the discretion in granting the supplementary remuneration for continued care for extraordinary services to certain personnel ... as well as taking the trade union actions that are considered most appropriate for the defense of their labor rights and those of all personnel."

Certainly, the management of public funds is one of the objectives of the transparency legislation (art. 1 LTC). In this case, the control of the granting of certain public funds in the form of a supplement for extraordinary services, their distribution among the workers, and the amounts received by each of them.

Now, for the purposes of interest, it should be pointed out that the individualized list of extraordinary services that would have already been provided to the claimant, which would encompass all of the entity's workers, would already allow, at the outset, to know the number of workers who perceive this complement, as well as the amounts perceived by each of them.

Thus, it seems that this control would be possible with the information that would have already been provided to the claimant (on an individual basis, although not by identifying each worker by name and surname, but through a code). This information, which would have been provided individually in terms of workers and the amounts received by each worker (although without identifying the workers with names and surnames), would already make it possible to verify that this supplement has indeed been paid, the number of workers

benefited (and, indirectly, also, the number of workers who would not have benefited from this supplement), as well as the amounts received annually by each worker.

In any case, it does not seem that providing the identity of the affected workers - as requested by the claimant - would allow us to compare whether the amounts received by certain workers "have become a periodic and fixed gain, contrary to all the aforementioned regulations", as pointed out by the claimant, more precisely than with the information that the claimant would already have.

In addition, for weighting purposes, it must be taken into account that the publication of the income of a natural person facilitates the obtaining of an economic profile of this person, which may end up causing him harm, both in the professional field, such as in front of financial institutions, socially etc. For this reason, it does not seem to be justified in the case considered to provide access to information on the remuneration received by certain workers, directly identifying these workers.

From the perspective of data protection, the intended purpose could already be fulfilled with the information already provided (identifying the workers with a code), without the need to sacrifice the privacy of the affected workers, that is, without including the identity of the workers affected

In this regard, it should be remembered that according to article 5.1 c) of the RGPD *"the data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")* .

Of all the above, it must be reiterated that the data protection regulations would not prevent access to the requested information, replacing the first and last names of the people affected by a code that does not allow them to be identified. Having said that, from the point of view of the general purpose of transparency, and taking into account the principle of minimization (art. 5.1.c) RGPD), access to the identity of the affected workers does not seem justified.

conclusion

Starting from the basis that the hypothesis proposed would not refer, from the information available, to high positions or managerial positions, of trust, of free appointment, of special responsibility or that involve high levels of remuneration, from the point of view of the purpose general transparency, and taking into account the principle of minimization (art. 5.1.c) RGPD), it does not seem justified to give access to the identity of the affected workers.

Barcelona, February 7, 2023