

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 against a city council regarding the request for a report regarding the distribution of personnel expenses that appear in the budget, by workplace and without any personal data.

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, presented against the City Council regarding the request of the report regarding the distribution of personnel expenses that appear in the budget, by workplace and without any personal data.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, in accordance with the report of the Legal Counsel, I inform you of the following:

Background

1. On September 19, 2022, an application is presented to the City Council in which the following information is requested: *"I would like to know the distribution of the €92,375 in personnel expenses that appears in the municipal budget for each position (annual or monthly), Without any personal data, I just want to know the gross annual or monthly amount for each staff position on which this money is spent"*.
2. On October 16, 2022, the applicant submits a claim before the GAIP in which he claims access to: *" I wanted to know how the personnel expenses that appear in the budget are distributed, by workplace and without any personal data."*
3. On October 25, 2022, the GAIP sends the claim to the City Council and requires it to issue a report on which to base its positions, as well as the complete file relating to the access request to public information and the identification of third parties affected by the requested access.
4. On November 24, 2022, the City Council sends GAIP a letter in which it collects the information relating to the distribution of personnel expenses that appear in the budget broken down by senior positions (mayor and councilors), labor personnel and social security contributions.
6. On November 29, 2022, the GAIP will send the person making the claim the report presented by the City Council.
7. On November 29, 2022, the claimant submits an email to the GAIP in which he states that he considers that the information provided by the City Council is not correct and incomplete since it does not even include the salary of the secretary of the town hall or of the municipal surveyor.

8 . On December 15, 2022, the GAIP will send the allegations presented by the person making the claim to the City Council and request their pronouncement on the matter.

9. On January 5, 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, understood as any information about an identified or identifiable natural person, directly or indirectly, in particular through an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of this person (art. 4.1 of Regulation 2016/679, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and by which Directive 95/46/CE (General Data Protection Regulation, hereafter RGPD) is repealed.

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

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

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

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

II

The purpose of the claim is to access information related to the distribution of personnel expenses that appear in the City Council's budget . The person making the claim specifies that this information is requested individually by workplace and without any personal data.

In accordance with the provisions of article 4.1) of the RGPD, any information " *about an identified or identifiable natural person ("the interested party") is considered personal data; 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 "*

Although the claimant specifies in his request that he does not want access to any personal data, it cannot be overlooked that, insofar as the information claimed refers to the distribution of personnel expenses that appear in the budget individually by workplace and, considering that it is a small municipality with a small number of workers, access to this information may involve revealing personal data of identifiable persons.

Article 4.2) of the RGPD considers "*treatment*": *cualquier operation or set of operations performed on data personal or data sets _ personal , yes either by procedures automated or not, such as collection , registration, organization , structuring , conservation , adaptation or modification , extraction , consultation, use , communication by transmission , diffusion or any another form of enabling access , comparison or interconnection , limitation , suppression or destruction . "*

The RGPD provides that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing data processing based on the need for one of the legal bases to be met established in its article 6.1. Specifically, section c) provides that the treatment will be lawful if "*it 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 it can only be considered based on this legal basis of article 6.1.c) of the RGPD when this is established by a rule with the rank of law.

For its part, article 86 of the RGPD provides that "*the data personnel of official documents in possession of some public authority or body public or a private entity to carry out a mission in interest public may be communicated by said authority , organism or entity in accordance with the Law of the Union or of the States members that apply them in order to reconcile public access to official documents with the right to data protection personal under this Regulation . "*

Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC recognizes the right of people 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 entity" (section 1).*

Article 2.b) of the LTC defines "public information" as "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".

For its part, article 53.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), specifies that it is public information subject to the right of access " all the information, any data or documents that the public administrations have prepared, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."

The information available to the City Council on the distribution of personnel expenses contained in the budget is public information for the purposes of article 2.b) of the LTC and, therefore, remains subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 et seq. LTC).

Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account what is established in articles 23 and 24 of the LTC, as well as the principles of the personal data protection regulations.

III

At the outset, it can be ruled out that the requested information (distribution of personnel expenses contained in the budget, for each job) contains special categories of data in the terms of article 23 LTC, in which case it would be necessary to deny the access to the information unless the express consent of the affected persons is obtained.

The provisions of article 24.2 LTC apply to the case at hand, according to which:

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

In such a way that access to the claimed information, in accordance with the provisions of article 24.2 LTC goes through a prior reasoned weighting between the public interest in the disclosure of this information and the right to data protection of the employees and municipal public officials about whom the information is requested, taking into consideration, among others, the time elapsed, the purpose of the access, the fact that it may affect the safety of people, etc.

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 18 LTC), but at the same time the purpose of having access is one of the elements to determine the existence of a public interest superior to access to information.

Thus, one of the first elements to be taken into consideration in the weighting of rights is the purpose of the access. To the extent that the claimant does not specify a specific purpose in his claim, the generic purpose of the transparency legislation applies, which according to article 2.1 of the LTC is "to establish a system of relationship between *the people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement 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*".

Certainly, knowledge of the distribution of personnel expenses that appear in the City Council's budget may be necessary to carry out an evaluation of the management of public resources that is part of the purposes of the transparency regulations.

In this sense, the LTC itself in article 11.1 determines the information related to economic and budgetary management that the Administration must make public in application of the principle of transparency, which must include, for the purposes that interest us now:

- a) The budget, with the description of the annual budget items and the data on their execution - so that the degree of execution can be known on a quarterly basis - and their liquidation, and compliance with the stability objectives budget and financial sustainability.*
- b) The remuneration, compensations and allowances, the activities and assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of the public bodies, companies, foundations and consortia, and the compensations that must perceive when ceasing to exercise the position.
(...)*
- e) The general information on the remunerations, compensations and allowances received by public employees, grouped according to the levels and bodies .*

From the outset, the obligations of active publicity in budgetary matters provided for in article 11.1.a) LTC, which focus on the publication of approved budgets and accounting, would already allow obtaining certain information related to the distribution of personnel expenses of the municipality

Thus, Order EHA/3565/2008, of December 3, which approves the structure of the budgets of local entities, regulates in its chapter 1 personnel expenses, which are broken down by distinguishing between the positions elected officials (Mayor and councilors) and management staff (Article 10), casual staff (Article 11), official staff (Article 12), labor staff (Article 13) and other staff hired to carry out tasks (Article 14).

It should also be taken into account that article 11.1.b) of LTC obliges the Administration to publish the remuneration received by senior officials of the Public Administration individually for each job and for any remuneration concept , compensation or allowance.

In local administration and for the purposes of the provisions of the LTC, they have consideration of high-ranking officials and local management personnel *"the elected officials and the holders of the bodies that exercise management or executive functions of a superior nature, adjusting their performance to the guidelines set by the governing body of the corporation, of in accordance with the provisions of the local regulations"*. (article 7) of RLTC).

Therefore, it does not seem that there can be any inconvenience in the claimant being able to access said information regarding senior officials and local management staff.

In line with the criterion maintained by this Authority in relation to access to information remuneration, the considerations that have just been made regarding the requests for access to the

Remuneration information that affects local management staff can be extended to staff who occupy positions of special trust, of special responsibility within the organization or at a high level in the structure of the corporation, of free appointment, or who they carry 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, access to this information contributes to a better knowledge of the criteria of organization and operation with respect to those positions work that, due to its uniqueness within the organization and due to the level of remuneration usually associated with it, justify a public interest overriding the right to data protection of the persons affected.

Consequently, there should be no problem in providing information individualized by workplace regarding the expenses corresponding to the remuneration of local management staff and staff who occupy positions of special trust, of special responsibility within the organization or of a high level in the structure of the corporation, of free appointment, or that entail a high level of remuneration.

With regard to the remuneration information of the rest of the workers , the obligations of active publication are limited to *"the general information on the remunerations, compensations and per diems received by public employees, grouped according to the levels and bodies"* (article 11.1. e) of the LTC). Consequently, it does not seem that the details of the information requested, regarding the rest of the workers, can go beyond the active advertising forecasts mentioned.

In any case, as this Authority has repeatedly highlighted, the evaluation of the use of public resources pursued by the transparency regulations can also be achieved by having the information on remuneration grouped by category or according to the different types of workplace, and therefore, it does not seem that access to staff remuneration that goes beyond what is already provided for by the same transparency law can be justified for transparency purposes .

Therefore, the information on personnel expenses relating to the remuneration of the rest of the municipal staff cannot be provided individually by workplace, but must be provided in an aggregated manner depending on the levels and bodies in what correspond

conclusion

The data protection regulations do not prevent the claimant's access to the distribution of the personnel expenses contained in the municipal budget, on an individual basis with regard to the remuneration of the local management staff and the staff who occupy positions of special trust, of special responsibility within the organization or of a high level in the structure of the corporation, of free appointment, or that entail a high level of remuneration.

With regard to the information on personnel expenses corresponding to the remuneration of the rest of the municipal workers, this must be provided grouped according to the levels and bodies to which they correspond.

Barcelona, February 1, 2023

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