

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim against the denial by a City Council of access to information on the amounts received by each of the councilors and mayor of the City Council from June 2019 to October 2022.

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the denial by a City Council of access to information on the amounts received by each of the councilors and mayor of the City Council from June 2019 to October 2022.

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 21, 2022, a citizen makes a request for access to public information to a City Council in which he requests " *the amounts received and broken down per year, for all concepts: The mayor, councilors (government team) councilors of the opposition, during the legislature, from June 2019 to August 2022*".
2. On November 14, 2022, the same citizen presented a claim to the GAIP in which he states that more than a month has passed since the submission of the request for access to information, he has not received any response from the town hall, which is why it presents a claim for the requested information.
3. On November 16, 2022, the claimant informs the GAIP that he has received a response, on November 3, 2022, from the City Council in which he provides access to the requested information through the web portal of the Catalan Audit Office. In the same letter he expresses his disagreement with the information received.
4. On November 25, the GAIP wrote to the person making the claim so that he specifies the information with which he disagrees and, therefore, what is the information that is the subject of the claim.
5. On December 1, 2022, the claimant submits a letter to the GAIP in which he states: " *I inform you, that I am not satisfied with the information received from the aforementioned town hall , since I don't have one means or knowledge to access the link received , además my petition was the siguiente : Se pide específicamente , the breakdown of the money perceived by each one of the councilors of the town hall during the period understood from June 2019 to October 2022.*"
6. On December 14, 2022, the GAIP sends the claim to the City Council and requests a report setting out the factual background and the foundations of its position in relation to the

claim, as well as the complete file and, if applicable , specifying the third parties affected by the claimed access.

7. On January 11, 2023, the GAIP requests a report from this Authority, in accordance with the provisions of article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government

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 data protection regulations, in accordance with what is established in articles 2.1 and 4.1) of the RGPD, apply to the treatments that are carried out on any information " *on an identified or identifiable natural person ("the interested party »); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person "*.

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

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need for some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment " *is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment "*.

As established in 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), data processing may only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

For its part, article 86 of the RGPD provides that " *the personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority , organism or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation .*

It follows from all this that the applicant's access to the personal data that may contain the requested information on the basis of the fulfillment of a legal obligation by the City Council (responsible for the treatment (art. 6.1.c) RGPD), must necessarily be covered by a rule with the rank of law.

The right of access to information held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, LTC), which recognizes people's right of access to public information, understood as such " *the information prepared by the Administration and that which it has in its power as a result of its activity or of the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law"* (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The information subject to the claim is public information for the purposes of article 2.b) of the LTC, and is subject to the right of access (article 18 of the LTC).

However, the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC regarding the personal data.

III

The person making the claim requests that the city council provide him with the amounts received, broken down by year and by all concepts, by the mayor, councilors (government team) and opposition councilors from June 2019 to August 'year 2022'.

From the outset it can be ruled out that the requested information contains special categories of data in the terms of article 23 of the LTC, in which case access should be denied unless the express consent of the interested

In relation to the personal data that may appear in the claimed documentation that are not considered to be specially protected, it is necessary to adhere to the provisions of article 24.2 of the LTC, which establishes:

"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 accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses what is the purpose he pursues and ultimately the reasons for which he is interested knowing the information adds a very important element to be taken into account as a weighting criterion between the public interest in the disclosure of the information and the rights of the people affected.

In the weighting between the rights of the interested party to access the requested information and the right to data protection of the person in charge of the mayor's office and the people in charge of the council offices whether they are from the government team or the 'opposition, it is necessary to take into consideration on the one hand the possible harm that the access would cause to these people and, on the other hand, if the access to their personal information allows the purpose of the access to be achieved, taking into account the principle restrictive interpretation of the limits on access to public information and the principle of no need for justification.

In the case we are concerned with, the person making the claim does not justify the purpose of the claim, but, in any case, the requested access should be understood as framed within

the purpose of the transparency law itself, which, in accordance with its article 1.2, it is *"to establish a system of relations between people and the public administration and the 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 accountability and responsibility in public management."*

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.

First of all, in relation to the information requested, articles 166 of the TRLRMC, 75 of the LRBRL and 13 of the ROF, regulate the financial compensation that corresponds to local elected officials for the exercise of their positions. Article 75 LRBRL distinguishes between: remuneration (of a salary nature) that is received for exclusive or partial dedication (sections 1 and 2); the assistances or remunerations that are perceived for the effective participation in the municipal collegiate bodies and that are appropriate only for the case of elected officials who do not have exclusive or partial dedication (section 3) and, the indemnities or compensations for the actual expenses incurred in the exercise of their position (section 4), expenses that must have prior documentary justification according to the rules of general application of public administrations and those approved by the Corporation's Plenary.

Regarding these remunerations, section 5 of article 75 of the LRBRL establishes the following:

"5. The Corporations premises consignarán sus _ budgets for the remunerations , compensations and assistance referred to in the previous four numbers , within the limits that are generally established , as the case may be. They must be published in full in the " Official Gazette " of the Province and look at the notice board of the Corporation for the agreements plenary sessions referring to the remuneration of the positions with exclusive and partial dedication and the dedication regime of the latter , compensations and assistance , as well as the agreements of the President of the Corporation determining the members of the same that will perform their functions in a regime of exclusive or partial dedication ."

Article 25.3 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereafter RLTC) establishes a general forecast for the publication of the global amounts allocated to compensation and allowances, but does not establish individualized advertising:

"In relation to compensation and per diems, local administrations and their public sector entities must publish the amounts that the corporation approves annually for this concept and that are determined in the budget execution bases. This section must be updated every time there is an update or change in the remuneration system or in the amounts with the approval of the new budget ."

However, in the case of elected officials, high-ranking officials and managerial staff, the LTC obliges public administrations to publish individually *"the remuneration, compensations and allowances, activities and assets of members of the Government, of high-ranking officials of the public administration and the management staff of public bodies, societies, foundations*

and consortia, and the compensation they must receive when they cease to exercise their position" (article 11.1.b).

Regarding what must be understood by senior officials and local management staff, article 7 of the RLTC establishes that:

"For the purposes of this decree, they are considered senior officials and local management personnel, in any case, elected officials (...)".

In accordance with these provisions, the information on all remuneration received by the members of the municipal government must be published individually on their website or electronic headquarters (article 5 LTC) and should cover the full amount for any concept remuneration, compensation or diet.

The fact that the remuneration information of local government members, which includes allowances and allowances, must be public is an essential element to be taken into consideration when weighing the right to access the claimed information.

Certainly, knowledge of the details of the expenses generated by the actions of the president of the corporation or of the various councils attributable to any retributive concept including compensations and per diems, during a period of time, may be necessary to carry out a evaluation of the management of public resources which is part of the purposes of the transparency regulations.

From the point of view of the degree of impact on the privacy of the person in charge of the mayor's office and the various councils, which may entail access to the compensations and per diems received, it can be said that in principle it is information of an economic nature, linked to the work and professional activity of those positions, which would not significantly affect their personal sphere.

Therefore, there are sufficient elements that justify that access to the requested public information should prevail.

conclusion

From the point of view of the data protection regulations, there should be no impediment in providing the person claiming the information relating to the amounts received for each of the councilors and mayor of the City Council from June 2019 to October 2022 broken down by year and by concepts.

Barcelona, February 9, 2023