

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 the denial by a public employment service of the request for access to information relating to the selection process of applicants for a training course

The Commission for the Guarantee of the Right to 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 public service of employment of the request for access to information related to the process of selecting applicants for a training course.

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

Background

1. On October 27, 2022, a person submits an application to a public employment service requesting access to the following information:

"- Basis of the call for course 21/CIFOS/561/0168554/011 PASTRY AND CONFECTIONERY, with details of all the requirements to be able to participate in it and how the selection process will be.

- Copy of the Tests carried out in the selection process of all applicants for the course 21/CIFO/561/0168554/011 PASTRY AND CONFECTIONERY [...] with an indication of the score obtained by each applicant. Of the tests of the unselected participants, they can only be identified by the initials of their numbers and surnames.

- Accreditation documentation for access to level 2 training of the certificate of professionalism of course 21/CIFO/561/0168554/011 PASTRY AND CONFECTIONERY of the selected students, including a copy of the tests of the key skills of mathematics and linguistic communication of the level 2.

- Corrective template handled by the court of the selection process that indicates the minimum level required to pass each of the exercises or other documentation handled by the court to objectify the exercise of its technical discretion.

- List of applicants for course 21/CIFOS/561/0168554/011 PASTRY AND CONFECTIONERY who passed the personal interview with an indication of the day and time they did the interview.

- Justification of the technical reasons on which the qualifying court was based to exclude applicants from the personal interview.

- Technical reasons on which the qualifying court was based to exclude (the applicant) from the personal interview, motivating the technical judgement, specifically

Expression and material or sources of information on which the technical judgment operated.

Qualitative assessment criteria used to issue the technical judgement.

Expression of why the application of those criteria led to the individualized result that granted the non-preference of (the applicant) in front of the others.

- Technical reasons on which the qualifying court was based to consider candidates suitable for the course in the personal interview, motivating the technical judgement, specifically:

Expression and material or sources of information on which the technical judgment operated.

Qualitative assessment criteria used to issue the technical judgement.

Expression of why the application of those criteria led to the individualized result that granted the preference of each applicant over the others.

- Media information _ used for each participant to communicate the result of the selection test and the personal interview” .

The applicant states that " the interest of this party in the requested documentation may be necessary to study possible legal actions against those responsible for allegedly issuing arbitrary resolutions in administrative matters".

2. On December 4, 2022, the applicant submits a claim to the GAIP in which he reiterates the terms of his application.

3. On January 2, 2023, the GAIP sends the claim to the public employment service, and requests a report setting out the factual background and the basis for its position in relation to the claim, as well as the complete file and, if where applicable, specifying the third parties affected by the claimed access.

4. On February 8, 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 complaints against resolutions regarding 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 contained in the requested information is outside the scope of this report, in particular, according to the allegations made by the parties, the limits provided for in articles 21.1.d) and 21.1.g).

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 to participate in some of the legal bases of article 6.1, among which

section c) provides for the assumption that the treatment " *is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment* ".

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

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* .

Public access to documents held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (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 the "exercise of his functions, including that supplied by the other obliged subjects in accordance with the provisions of this law* " (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

The first additional provision of the LTC establishes that " *the access of the interested parties to the documents of the administrative procedures in progress is governed by what is determined by the legislation on legal regime and administrative procedure* " .

In accordance with this provision, when the access request is made by a person interested in an administrative procedure that is pending, the administrative procedure regulations will apply.

Based on the information available, the person requesting access to the information relating to the pastry and confectionery course appears to be a person who has participated in the process, who, according to the provisions of article 4 of the LPAC, has the status of interested person, to the extent that it may be affected by the result of this administrative procedure.

But, also based on the information available, it seems that the selective process would have ended at the time when the access request was submitted, given that the person making the claim refers to the fact that certain information only request respect for the students selected to participate in the course.

Consequently, the request for access to certain information relating to the process of selecting candidates for the training course referred to in the claim is subject to the transparency regulations and the regime of the right of access provided for in article 18 of the LTC.

It must be noted, however, that this right of access is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case with the limits of articles 23 and 24 of the LTC regarding personal data.

III

The claimant requested from the public employment service certain information related to the call and selection process for students in the course 21/CIFOS/561/0168554/011 of Pastry and Confectionery (from now on, the course).

At the outset, it should be noted that although the claimant does not provide any further information on the pastry and confectionery course, as can be seen from his application, it seems likely that he is referring to the course or training relating to obtaining the level 2 certificate of professionalism in pastry and confectionery, from the professional family of food industries and which is identified with the code INAF0109, in accordance with what is established in Annex V of Royal Decree 646/ 2011, of May 9, which establishes thirteen certificates of professionalism of the professional family Food industries that are included in the National Repertory of certificates of professionalism and updates the certificate of professionalism established as Annex I in the Royal decree 1380/2009, of August 28.

Once the object of the requested information has been determined, the analysis must be based on article 25.4.c) of Law 13/2015, of July 9, on the organization of employment system and the Public Employment Service of Catalonia, by which it is established that the territorial structure of the Public Employment Service of Catalonia is formed, among others, by the centers of innovation and occupational training.

And, in accordance with article 34.3 of Law 13/2015, of the fact that the centers of innovation and occupational training (from now on, CIFO) "[...] *form the network of reference centers in vocational training. They base their activity fundamentally on imparting professional training actions for employment, of quality and adapted to the needs of people, companies and territories, and, where appropriate, professional training, in accordance with the requirements of the professional training and qualification system of Catalonia*".

As stated, the claimant requests certain information related to the process of selecting students for the course or training to obtain the pastry and confectionery professional certificate (code INAF0109).

The Royal Decree 34/2008, of January 18, which regulates certificates of professionalism aims to regulate the essential aspects of certificates of professionalism, such as their effects, structure and content, ways to obtain them and those relating to the imparting and evaluation of the corresponding professional training offers for employment, in accordance with the provisions of Organic Law 5/2002, of June 19, on Qualifications and Professional Training (art. 1).

The certificate of professionalism is the official accreditation instrument of the professional qualifications of the National Catalog of Professional Qualifications in the field of labor administration, which accredits the training for the development of a labor activity with significance for the employment and ensures the necessary training for its acquisition, within the framework of the professional training subsystem for employment regulated in Royal

Decree 395/2007, of March 23 (art. 2.1 Royal Decree 34/2008). In similar terms, article 3 and 28.1 of Decree 182/2010, of 23 November, on the organization of vocational training for employment in Catalonia provides for it.

Regarding the requirements for access to training for professional certificates, article 20 of Royal Decree 34/2008 establishes the following:

" 1. It will be the responsibility of the competent Labor Administration to verify that the students meet the training and professional requirements to take advantage of the training in the terms provided for in the following sections.

2. To access the training of the training modules of the professional certificates of professional qualification levels 2 and 3, students must meet some of the following requirements:

- a) To be in possession of the title of Graduate in Compulsory Secondary Education for level 2 or Bachelor's degree for level 3.*
- b) Be in possession of a certificate of professionalism of the same level as the training module or modules and/or the certificate of professionalism to which you wish to access.*
- c) Be in possession of a level 1 professional certificate from the same family and professional area for level 2 or a level 2 professional certificate from the same family and professional area for level 3.*
- d) Comply with the academic requirement for access to the middle school training courses for level 2 or higher level for level 3, or have passed the corresponding access tests regulated by the educational administrations.*
- e) Having passed the university entrance exam for those over 25 and/or 45 years old.*
- f) Have the necessary key skills, according to what is included in annex IV of this royal decree, to take advantage of the training corresponding to the certificate of professionalism.*

For access to professional certificates, tests of mathematical and communication skills will be carried out in Spanish and, if there is one, in the co-official language, at the corresponding level.[...] These tests will be carried out in relation to the skills defined in annex IV of this royal decree.

[...]

To verify with objectivity and technical rigor the fulfillment of this requirement, the Public Employment Services will determine the procedure for carrying out the tests of key skills necessary to access the training of professional certificates, as part of the student selection process, as well as the concrete results that must be verified and the criteria for their measurement. The tests can be carried out either directly by the Public Employment Services or through the training centers, for which they must be previously authorized, based on previously established tests or those that can be proposed by said centers.

People who have passed with positive evaluation training actions corresponding to key skills that appear in the file of training specialties of the State Employment Service will be exempt from these tests .

In identical terms to article 20.2 of Royal Decree 34/2008, regarding the access requirements, article 4 of Royal Decree 646/2011, of May 9, which establishes thirteen certificates of professionalism of the professional family Food industries that are included in

the National Repertory of certificates of professionalism and the certificate of professionalism established as Annex I in Royal Decree 1380/2009, of August 28, is updated.

IV

The claimant requests access, regarding the process of selecting students for the course to obtain the level 2 certificate of professionalism in pastry and confectionery (INAF0109), to the following information:

"- Basis of the call for course 21/CIFOS/561/0168554/011 PASTRY AND CONFECTIONERY, with details of all the requirements to be able to participate in it and how the selection process will be.

- Copy of the Tests carried out in the selection process of all applicants for the course 21/CIFO/561/0168554/011 PASTRY AND CONFECTIONERY [...] with an indication of the score obtained by each applicant. Of the tests of the unselected participants, they can only be identified by the initials of their numbers and surnames.

- Accreditation documentation for access to level 2 training of the certificate of professionalism of course 21/CIFO/561/0168554/011 PASTRY AND CONFECTIONERY of the selected students, including a copy of the tests of the key skills of mathematics and linguistic communication of the level 2.

- Corrective template handled by the court of the selection process that indicates the minimum level required to pass each of the exercises or other documentation handled by the court to objectify the exercise of its technical discretion.

- List of applicants for course 21/CIFOS/561/0168554/011 PASTRY AND CONFECTIONERY who passed the personal interview with an indication of the day and time they did the interview.

- Justification of the technical reasons on which the qualifying court was based to exclude applicants from the personal interview.

- Technical reasons on which the qualifying court was based to exclude Mr. Francisco Molina Cano from the personal interview, motivating the technical judgment, specifically

Expression and material or sources of information on which the technical judgment operated.

Qualitative assessment criteria used to issue the technical judgement.

Expression of why the application of those criteria led to the individualized result that granted the non-preference of Mr. Francisco Molina Cano over the others.

- Technical reasons on which the qualifying court was based to consider candidates suitable for the course in the personal interview, motivating the technical judgement, specifically:

Expression and material or sources of information on which the technical judgment operated.

Qualitative assessment criteria used to issue the technical judgement.

Expression of why the application of those criteria led to the individualized result that granted the preference of each applicant over the others.

- Media information _ used for each participant to communicate the result of the selection test and the personal interview” .

At the outset, from the point of view of data protection regulations, it does not pose any problem to give the claimant access to the basis of the course call with the details of the requirements to be able to participate and the information relating to the procedure of the selection process, as well as the template for correcting the tests of the selection process available to the court, given that it is information which a priori should not contain personal data and, moreover, in the case of the bases of the call and the development of the selection process, this is information subject to active advertising obligations.

Regarding the rest of the information requested, insofar as it contains personal data, the analysis of the possibility of access must be carried out in accordance with the criteria of article 24 of the LTC , given that the information requested a priori does not seem to contain particularly protected data in the terms provided for in article 23 of the LTC, that is, relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender. If this is the case, access to this information must be denied unless the consent of the affected persons is available, or one of the enabling circumstances provided for in article 15.1 of the LT is met.

Article 24 of the LTC states the following:

"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 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.

3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the data protection legislation staff."

It should be borne in mind that among the information requested, the claimant wants to access data that is his own (in summary, the reasons why the qualifying court excluded him from the selection process in the personal interview phase) and others that affect third parties.

Regarding personal data, the person making the claim requests access to the following information:

"- Technical reasons on which the qualifying court was based to exclude (the claimant) from the personal interview, motivating the technical judgment, specifically

Expression and material or sources of information on which the technical judgment operated.

Qualitative assessment criteria used to issue the technical judgement.

Expression of why the application of those criteria led to the individualized result that granted the non-preference of (the person claiming) in front of the others" .

In accordance with the provisions of article 24.3 of the LTC, requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of right of access established by the personal data protection legislation.

In relation to this provision, it is necessary to refer to article 15 of the RGPD, which regulates the right of access in the following terms:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;*
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
- f) the right to present a claim before a control authority;*
- g) when the personal data has not been obtained from the interested party, any available information about its origin;*
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the person concerned."*

[...]

3. *The person responsible for the treatment will provide a copy of the personal data subject to treatment. The responsible may charge for any other copy requested by the interested party a reasonable fee based on administrative costs. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.*

4. *The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others”.*

This precept recognizes, brought to the case at hand, the right of the person claiming to access a copy of their personal data subjected to treatment, including, where appropriate, "[...] the material or sources of information on which the technical judgment operated; qualitative assessment criteria that will be used to issue the technical judgment; expression of why the application of those criteria led to the individualized result that granted the non-preference of (the person claiming) against the others”.

On the other hand, he could not access the rest of the information that affects third parties in this way, but the possibility of accessing this information must be analyzed in accordance with the weighting referred to in article 24.2 of the LTC.

v

In accordance with the provisions of article 24.2 of the LTC, the possibility of providing the requested information, which affects third parties, other than those provided for in article 24.1 of the LTC, and which does not refer to data referred to in article 23 of the LTC, requires prior weighting reasoned between the public interest in the disclosure and the rights of the affected persons - in this case the persons who participated in the selective process of 'students', taking into consideration, among others, the time elapsed, the purpose of the access, the guarantees offered, if there are minors affected or the fact that the intended access may affect the people's safety.

In particular, with respect to third parties who participated in the selection process for the pastry and confectionery course, the claimant requests:

"[...]

- Copy of the Tests carried out in the selection process of all applicants for the course 21/CIFO/561/0168554/011 PASTRY AND CONFECTIONERY [...] with an indication of the score obtained by each applicant. Of the tests of the unselected participants, they can only be identified by the initials of their numbers and surnames.

- Accreditation documentation for access to level 2 training of the certificate of professionalism of course 21/CIFO/561/0168554/011 PASTRY AND CONFECTIONERY of the selected students, including a copy of the tests of the key skills of mathematics and linguistic communication of the level 2.

[...]

- List of applicants for course 21/CIFOS/561/0168554/011 PASTRY AND CONFECTIONERY who passed the personal interview with an indication of the day and time they did the interview.

- Justification of the technical reasons on which the qualifying court was based to exclude applicants from the personal interview.

[...]

- Technical reasons on which the qualifying court was based to consider candidates suitable for the course in the personal interview, motivating the technical judgement, specifically:

Expression and material or sources of information on which the technical judgment operated.

Qualitative assessment criteria used to issue the technical judgement.

Expression of why the application of those criteria led to the individualized result that granted the preference of each applicant over the others. [...]"

In accordance with what is established in article 24.2 of the LTC, the purpose of the access request is one of the elements that can be taken into account to carry out the weighting.

It should be borne in mind that although article 18.2 of the LTC provides that the exercise of the right of access is not conditional on the concurrence of a personal interest, and is not subject to motivation nor does it require the invocation of any rule, knowing the motivation for which the person making the claim wishes to obtain the information can be a relevant element to take into account in the weighting.

In the case at hand, it follows from the terms of the access request that the person making the claim has participated in the selection process for students in the pastry and confectionery course to which he refers, and has not been one of the persons selected. This makes sense with the fact that the claimant bases his request for access with the aim of "[...] *studying possible legal actions against those responsible for allegedly dictating arbitrary decisions in administrative matters* " .

Given this, it seems clear that the claimant motivates his request for access by being able to assess whether there were irregularities or arbitrariness in the selective process in which he participated, which would have directly harmed him and the possibility of taking legal action in relation to the selection process. And, therefore, it bases access on a personal or particular interest, given its status as a participant in the selection process.

The private or particular dimension of the right of access to public information is specified by allowing people to access information that may be of interest to their sphere of particular interests and, in this sense, the purpose of access plays an essential role in balancing the two rights at stake. In fact, according to what has been advanced, the particular interest that can be pursued by the citizen with access is provided as a weighting criterion in article 15.3.b) of the LT, establishing expressly that it is necessary to take into consideration " *the justification by the petitioners of their request in the exercise of a right (...)* " .

In turn, article 22.1 of the LTC provides that "*the limits applied to the right of access to public information must be proportional to the object and purpose of protection. The application of these limits must take into account the circumstances of each specific case, especially the concurrence of a higher public or private interest that justifies access to the information .*"

In any case, in order to make the correct weighting, it is particularly important that the information to which you want to access and obtain a copy is part of a competitive competition procedure in which the person making the claim has participated.

This is how it was collected by the Supreme Court in the STS of January 26, 2011, where it was said that the right of access to the file "*is certainly aimed at facilitating the right of defense (...) and this is what it means the interested party is offered the possibility of knowing in an administrative procedure all the facts and data that may be relevant to the protection of the rights and interests that he wants to exercise by any means*".

Taking into consideration that the information requested is part of the file relating to a competitive competition process (student selection process for the course), it is appropriate to refer, as an example, to Judgment 623/2018 of Superior Court of Justice of Madrid, which includes the following criteria:

"(...) *it is affirmed that in the processes of competitive competition, the principle of publicity and transparency becomes essential, as a guarantor of the principle of equality. Thus, the National Court has weighed the principle of publicity with the protection of personal data, reaching the conclusion that during the processing of the selective process the former must prevail, because one of the exceptions to the requirement of consent for the treatment of data is that of the collision with general interests or with other rights of higher value that cause data protection to decline due to the preference that must be granted to that other interest. As it is a competitive competition procedure, the National Court considered that in accordance with Article 103 of the EC, the guarantees required by the processing of personal data cannot be used to obscure or nullify these general requirements that oblige the processes to be conducted in compliance minimum requirements for transparency and publicity. The superiority of these other values advises that in this case it is understood that the consent of those people who participate in a competitive competition procedure was not required for the treatment of the qualifications obtained in said procedure and it as a guarantee and requirement of the other participants to ensure the cleanliness and impartiality of the procedure in which they participate.*

Therefore, the Defender concludes that the Administration must provide the applicant with access to that information relevant to the selection process that allows him to verify the cleanliness and impartiality of the procedure in which he participated, including the personal data of third parties also participating in the same processes selective with which the applicant competed for the same places ."

It is clear that in the evaluation of the tests carried out and the merits accredited by the candidates, which must be done in the selection process, there is a margin of technical discretion that corresponds to the qualifying body. The control of this margin of discretion, to prevent arbitrariness, can only be carried out if the subject affected by the administrative decision (the candidate not selected) has the possibility of knowing the factual elements from which it is based the evaluation made in this regard by the selection body.

Thus, in exercise of the right of defense and for the purposes of being able to verify any arbitrary actions of the qualifying body contrary to the principles of equality, merit, capacity and transparency that must govern in any procedure of this type, it would be justified that the claimant can have information on the different aspects that have been assessed in the selection process.

But, from the point of view of the principle of data minimization (Article 5.1.c) RGPD), according to which the data subject to treatment must be adequate, relevant and necessary for the fulfillment of the intended purpose of the access, the question must be focused on determining whether this information must be exclusively for the applicants finally selected or whether it can also cover other participants in the selection process.

The cited jurisprudence resolves the issue in the sense that it should be possible to access the aforementioned information relating to candidates who have obtained a better score or position than the person claiming in the selection process, but not to those who have obtained a worse score or position, nor personal data unnecessary for the defense of the person concerned, such as address, telephone number, email, etc.

Having the information referring to applicants who have obtained a worse score, or who have not passed the selection process, would not be justified, given that their position with respect to the person requesting access would not entail any harm to their rights and interests.

For this reason, taking into consideration that, according to the request, the person making the claim did not pass the selective process in the personal interview phase, given that among the information that is requested to know, he requests access to the reasons from which the qualifying court was based to exclude it from the process in the personal interview, it is necessary to recognize the right of the person claiming to access and obtain a copy of the requested information, but exclusively from the participants who did go pass the personal interview.

conclusion

Data protection regulations do not prevent access to information related to the basis of the call, including information related to the requirements to be able to participate and the selection process, as well as the template or criteria for correcting the tests. Nor should there be any problem in granting access to the claimant's own data.

However, with respect to the information that affects third parties who have participated in the selection process, and given the circumstances that occur in the specific case, the person making the claim only has the right of access to the information requested with respect to the persons who they passed the personal interview phase, as this is relevant information for the control of the performance of the selection body and for the defense of its interests.

Barcelona, February 24, 2023