

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 presented by a staff delegate, against a City Council, for the denial of access to information about the selective process in which he would have the head of human resources of the City Council participated

The Commission for Guaranteeing the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim presented by a staff delegate and president of a trade union section in the City Council, claiming access to information about the selective processes to which Mr. (...), head of human resources of the City Council according to the information available, as well as all the academic degrees provided in the selective process in 2022 service fee.

After analyzing 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 Counsel, the following report is issued.

Background

1. On October 6, 2022, the official personnel delegate of the City Council, presents a request, addressed to the City Council itself, in which he requests access to information related to the selective processes to which Mr. (...) - who, according to the information available, is head of human resources at the City Council-, as well as the academic degrees that he would have provided in the selection process for the services commission at the City Council, in 2022.

In the same letter, the applicant makes other requests, specifically, that all members of the plenary session be given a view and a copy of the instance presented (point two), that a view and copy of the instance presented be given to the department of intervention and treasury of the City Council (point three), and that said written action be considered as filed against a mayor's decree of payment of a supplement to the affected person (point four).

2. The file contains a copy of the mayor's decree, by which the appeal referred to in the fourth point of the aforementioned request of October 6 is inadmissible extemporaneously .

3. On November 7, 2022, the applicant filed a complaint with the GAIP, in the capacity of staff delegate and president of the trade union section and current representative of civil servants.

Specifically, the complainant requests that: " I am given a view *and* a copy of *the selection process that* Mr.

In the same claim to the GAIP, the claimant states that the reason for the claim would be: "*not providing the documentation for the request section 1 of the instance presented as elected personal representative (...).*"

4. It is stated in the file that the City Council would have delivered on December 23, 2022 to the claimant, a copy of the decree calling for the selection process for the provision of a position of head of human resources at the City Council, through the provision procedure by service commission, of April 12, 2022, as well as a copy of the assessment report of the only applicant (the affected person), and of the proposal to provide the place by commission of services in favor of the only applicant.

5. On November 17, 2022, the GAIP informs the City Council 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.

6. On February 24, 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.

7. To date, this Authority has no evidence that the City Council has responded to the request made by the GAIP.

Legal Foundations

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.

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

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 (hereinafter, RGPD), defines personal data as "*any information about 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 4.1 RGPD).

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*".

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 Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation.*"

Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, 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*".

The person making the claim requests that : "*I be given a view and a copy of the selection process that Mr. 2022.*"

The information relating to the personnel regime that provides services to a public administration, in this case, at a local level (files of selective processes for access to the civil service, information on the recruitment of labor personnel or the appointment of civil servants) , as well as the information that the City Council may have on its staff, is public information for the purposes of article 2.b) of the LTC and is subject to the regime of the right of access (article 18 LTC) .

However, this right of access is not absolute and may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the limitations and criteria provided for in the transparency legislation (articles 23 and 24 LTC), and the principles of the personal data protection regulations.

III

In advance, it should be noted that the person presenting the claim is made as a delegate of official staff and president of a trade union section, in the capacity of interested party. The written request for prior information presented to the City Council, which appears in the file, is also presented in the same terms.

This issue is relevant, given that they are the boards or staff delegates (art. 39 TRLEBEP (Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Basic Statute Law of the public employee)), as well as the Company Committee (art. 63 of the Workers' Statute (Royal Legislative Decree 5/2015, of October 30), the specific bodies representing civil servants and public workers with an employment contract respectively, and as such, exercise the functions granted to them by the corresponding regulations (art. 40 TRLEBEP and 64 ET), among others, the function of monitoring compliance with current regulations.

The first Additional Provision of the LTC provides that " 2. *Access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law.*"

In this case, the workers' representatives have a specific right of access to information provided for in articles 40 of the TRLEBEP and 64 of the ET, and consequently it is these rules that must be applied as a matter of priority, without prejudice to the supplementary application of the access regime provided for in the transparency legislation.

Article 40 of TRLEBEP, regarding the functions and legitimacy of the representative bodies, provides:

"1. Staff boards and staff delegates, where applicable, have the following functions, in their respective areas:

a) Receive information on personnel policy, as well as data on the evolution of remuneration, probable evolution of employment in the corresponding field and performance improvement programs.

(...).

e) Monitor compliance with current regulations regarding working conditions, prevention of occupational risks, Social Security and employment, and exercise, if necessary, the appropriate legal actions before the competent bodies.

(...)"

The TRLEBEP grants personnel delegates the function of receiving information on the evolution of personnel policies, (art. 40.1.a)), as well as that of monitoring and controlling compliance with the current rules in the field of employment (art. 40.1.e)). These, as workers' representative bodies, must be able to access the information available to the City Council that is necessary for the exercise of their functions, information that could contain workers' personal data. In similar terms, and with regard to labor personnel, article 64 of the ET attributes to the works committee and by extension also to the staff delegates (art. 62.2 ET) the right to be informed about the issues that affect the workers

This regulation recognizes the function of monitoring compliance with current employment regulations to the representative bodies. TRLEBEP also adds the right to receive information on personnel policies. Beyond this, there is no other specific provision that is directly related to personnel selection processes for the provision of jobs, and consequently the eventual access to workers' personal information by their bodies of representation should find its qualification in this function of monitoring the rules in force.

Apart from the provisions of the specific access regime, it will also be necessary to take into account the provisions of the transparency legislation, the purpose of which is, as can be seen from article 1.2 LTC, to establish a system of relationship between people and the Public Administration and the 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 of responsibility in public management.

Thus, if citizens must be able to have this ability to control and hold public administrations to account, with more reason, if appropriate, this ability must be recognized in the workers' representatives.

IV

Based on the information available, the claimant formulates his claim in reference to the selection process for the provision of the position of head of human resources of the City Council, in the services committee, which would have concluded in favor of the only applicant, which is the affected party referred to by the claimant.

Given that the access request is made in reference to the selection process mentioned, it must be borne in mind that the files relating to a personnel selection process can contain a large volume of personal information of various kinds: identification data , forms of application to participate in the call, supporting or accrediting documentation of merits and requirements (curriculum vitae , certificates, academic degrees...), data deserving of special protection (health, criminal offences...), exams and exercises made by applicants, documentation drawn up by the examining board (lists, minutes, qualifications, appointment proposals...) as well as information on procedures, communications, notices, etc.

At the outset, from the perspective of data protection, there is no disadvantage in facilitating the claimant's access to that information or documentation of the file of the selective process in question, which does not contain personal data (statements of exercises, criteria for correction and evaluation of these exercises, fixed scales for the evaluation of merits, etc.).

Having said that, also remember that if the information requested contains information deserving of special protection (art. 23 LTC and 15 LT), its confidentiality must be preserved, unless with the request 'had provided the express consent of the affected person (article 70.1 Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC)), or that any other of the enabling circumstances provided for in article 15.1 of the LT, to which we refer. If none of these circumstances occur, the right to data protection would prevail over the right to access information regarding this information.

With regard to the rest of the personal data that may be included in the required information (selective process to which the affected person would have submitted), it will be necessary to adhere to the provisions established in article 24 of the LTC, according to the which:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights.

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

a) The elapsed time.

b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.

(...)."

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 letter presented to the City Council on October 6, and which he attached to his claim to the GAIP, the claimant states, in summary, that the selective process by which the affected person, a human resources technician in the 'City Council, would have reached the position of head of human resources, would not have adjusted to the applicable legal provisions. Likewise, the claimant questions the destination supplement attributed to the affected person.

By application of article 24.1 LTC, from the perspective of data protection, there would be no disadvantage in providing merely identifying information of public employees or positions that intervene due to their functions in the different selective processes subject to the sole-access request

As this Authority has done on several occasions, the data protection regulations do not prevent access to the merely identifying data of public officials or employees that, in the exercise of their functions, may appear in the different documentation requested, in in this

case, in the documentation relating to the selective process or processes in which the affected person has participated, during the period indicated by the claimant.

In this sense, according to article 70.2 of the RLTC:

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

(...)."

It is also relevant to take into account that part of the information requested, relating to the aforementioned selective process, would have already been the subject of publicity by the City Council, in accordance with the regulations applicable to selective processes and access to the function public

The TRLEBEP establishes that personnel selection processes in the field of Public Administrations are subject to a series of principles, among which those of publicity and transparency should be highlighted (article 55.2.a) ib)). Specifically, with regard to the provision of jobs for civil servants, the rule provides that they must be provided through procedures based, among others, on the principle of publicity (article 78 TRLEBEP). As far as labor personnel are concerned, we refer to article 83 of the same rule.

At the local level, Decree 214/1990, of July 30, which approves the Regulation of personnel in the service of local entities, expressly provides for the publication in the BOP of the appointment of the selected persons (article 82 RPEL) .

Article 9.1.e) of the LTC, establishes that the results of the selective processes for the provision and promotion of personnel must be published (on the transparency portal or the corresponding electronic site) and it is not distinguished if it is a provisional provision or final

Regarding access to public administration staff status, article 21 of the RLTC establishes that:

1. For the purposes of letter e) of article 9.1 of Law 19/2014, of 29 December, public administrations must publish the calls for tenders and the results of:

- a) Access procedures to the bodies and scales of official, statutory and labor personnel.*
- b) Internal promotion procedures.*
- c) Provisional and definitive provision procedures.*
- d) Procedures for the selection of temporary staff or temporary workers, including temporary staff exchanges.*
- e) Scholarships and grants for providing services.*
- f) Intern recruitment offers.*

2. The data to be published must refer, at least, to the announcement of the call, the bases, the official announcements and the name and surname and the four numbers of the national identity document or equivalent document of the persons admitted to each test or exercise of the process and of the person finally selected, in accordance with the criteria established in the field of data protection.

3. The update of the publication of the data is continuous, depending on the development of each call. In the event that there is no data to be published, this end must be noted."

Taking all this into account, facilitating access to information that has already been disseminated by application of the corresponding regulations, in the course of the selection process, does not entail a special interference with regard to the right to the protection of personal data of the people affected, such as, for example, the lists of applicants admitted to the process, the appointment of the person who has passed the selection process or the workplace to which he remains attached.

Applying these considerations to the case examined, there does not seem to be any obstacle in providing this information regarding the selective process referred to by the claimant.

Having said that, and with regard to the rest of the personal data that these files may contain, it is necessary to analyze whether access to this data would be necessary to achieve the purpose of access pursued, which should be framed within the exercise of functions legally attributed to staff delegates, or at the very least, if it is justified to access them to achieve the transparency purposes provided for in the transparency legislation (art. 24.2 LTC).

In the case at hand, and given the information available, it seems that in the selective process referred to by the claimant there was only one applicant, specifically, the person referred to by the claimant.

Taking this into account, we believe that access to the data of the affected person (who would have won the competition), which would be included in the corresponding file, could lead to providing information about their identification and contact data, the experience, the academic training or, where appropriate, on the tests carried out. It is therefore necessary to make a prior weighting between the public interest in its disclosure and the impact it may have on the privacy of the candidate finally appointed.

In this case, to assess the public interest that may exist in access to information, it is necessary to take into account that article 31.6 of the revised text of the Basic Statute of the Public Employee (EBEP), approved by Royal Legislative Decree 5/2015, of October 30, recognizes the legitimacy of the most representative trade union organizations to challenge the agreements of the selection bodies:

"6. The most representative trade union organizations in the field of Public Service are authorized to file administrative and judicial appeals against the decisions of the selection bodies."

Therefore, and to the extent that the delegate requesting the information belongs to a trade union organization that has the most representative status to carry out the control of administrative action, it seems that access could cover not only the identity of the selected person, but also the knowledge of the alleged merits that have been taken into account and

the score obtained. Thus, the claimant could have access, in particular, to the documentation on the academic qualification provided by the affected person in the selection process in question.

Certainly, this access entails a considerable impact on the right to data protection of the selected person, given that it allows to know not only the score obtained ((which, in fact, is already included in the minutes of April 12, 2022, that the council would have already provided to the claimant), but also other relevant aspects of their academic or professional life, and even elements of their personality, depending on the tests carried out, which allow a profile to be obtained.

However, this limitation seems to be necessarily derived from the recognition of the legitimacy mentioned by the EBEP, given that, as this Authority has argued on previous occasions, it would not make sense to recognize the legitimacy to appeal administratively or through litigation, without being able to access the information necessary to analyze the feasibility of the resource.

In any case, from the perspective of the principle of minimization (art. 5.1.c) RGPD), it would be necessary to exclude certain identification and contact data of the selected person (DNI number, telephone, address, etc.), in case may be included in the claimed information.

However, in the event that the claimant is not a delegate of a trade union organization that has the status of more representative, the information should be limited to the identity of the selected person and the scores obtained in the different merits or tests, given the applicable regulations. Information that, in the case at hand, and given the information available, the City Council would have already provided the claimant.

All this, without prejudice to the fact that certain personal circumstances of the affected person could justify the limitation of the claimant's right of access to the personal information referred to. In this sense, remember that it would be convenient to transfer the affected person of the access request, in order, if necessary, to be able to allege the concurrence of one of these circumstances (article 31 LTC).

conclusion

The data protection regulations do not prevent the access of the claimant, if he is a delegate of a trade union organization that has the status of the most representative, to the information on training data, professional experience, as well as the score regarding the merits and other evaluative elements that have been taken into account in the selection process and the scores awarded in relation to the affected person.

In the event that the claimant does not belong to a trade union organization that has the status of more representative, the information must be limited to the identity of the person selected in a selective process - if applicable, the affected worker - and the scores obtained in the different merits or tests.

Barcelona, March 20, 2023