

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 partial denial of a department to the request for the list of jobs corresponding to a call, with indication of the date of creation of the position and periods that the positions have been covered by interims, indicating the order number of the people assigned to each of the positions.

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 of a department to the sole request for the list of jobs corresponding to the call (...), indicating the date the position was created and the periods that the positions have been filled by temporary workers, indicating the order number of the people assigned to each of the squares.

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 Counsel, I inform you of the following:

Background

1. On December 15, 2022, a citizen submitted a request for access to public information in which he requested access to the following information:

"List of jobs for those jobs assigned by base 12.2 ai 12.2 b related in annex 1.a and annex 2.a, corresponding to the internal procedure code of the call (...), with indication of the date of creation of the corresponding position, and periods during which the positions have been covered by temporary workers for each of the positions, indicating whether the coverage has been through replacement or temporary work and indicating the order number of the people assigned to each of the positions places."

2. On January 16, 2023, the Secretary General of the claimed department resolves the request for access in the sense of partially evaluating the request for access to the information and "supplying the requested information regarding the points 1 and 2, within a maximum period of 30 days (...)"

3. On January 16, 2023, the applicant submits a claim before the GAIP against the Partial Resolution of the Secretary General of the claimed department in which he claims the same documentation and alleges that "The administration argues data protection of personal nature, when no personal data is requested in the application at any time, only the order number is requested".

4. On January 27, 2023, the GAIP sends the claim to the complained department 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, where appropriate, that specify the third parties affected by the claimed access .

5. On February 14, 2023, the Secretary General of the claimed department sends the GAIP a report on the claim presented, in which it states, among other things, that:

"(...) How is established in article 34.2 of Law 19/2014, of December 29, the resolution must be estimated of the request , unless some are applicable _ of the limits established in the law . In the case of " the order of the people assigned to each place " applies the limits of Law 19/2014 considering that the order refers to data that can identify the people who occupy these places, that is why the right to the protection of data of these people prevails over the interest public .(...)"

6. On February 24, 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

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.

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 the *"List of jobs for those jobs assigned by basis 12.2 ai 12.2 b related in annex 1.ai annex 2.a, corresponding to the internal procedure code of the call (...), with an indication of the date of creation of the corresponding position, and periods that the positions have been covered by interims for each of the positions, indicating whether the coverage has been by replacement or interim and indicating the order number of the people assigned to each of the places."*

The requested information forms part of the file relating to the call approved by the RESOLUTION (...), calling for stabilization processes, through the exceptional selective merit competition system, in relation to bodies, scales or specialties of official staff of the Administration of the Generalitat of Catalonia under the jurisdiction of the Directorate General of Public Function (...). In particular, with respect to Annex Annex 6 of the call for the administrative auxiliary scale of the auxiliary administration body of the Generalitat of Catalonia (group C, subgroup C2) with the internal procedure code (...).

Based on the information available, the secretary general of the claimed department would have resolved to facilitate access to the claimed information except for the order number of the people assigned to each of the positions, considering that this information would allow identifying the people who occupy the said places

At the outset it can be said that the data protection regulations do not prevent the claimant's access to information on the list of jobs with indication of the date of creation of the position and the periods in which the positions have been covered by interims given that this information does not contain personal data.

Regarding the order number of the people assigned to each of the places, even if the claimant specifies in his request that he does not want to access any personal data, it cannot be overlooked that, as indicated by the secretary of the claimed department, revealing the order number of the people assigned to each position would allow, without effort disproportionately based on the information published in the call procedure to identify the people who occupy the places related to the information claimed, and therefore, it would involve revealing personal data of identifiable people under the terms of the RGPD.

In this sense, article 4.1) of the 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 4.2) 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 claimed information 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 to 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

In accordance with article 24.2 of the LTC when the request for access is related to public information that contains personal data not included in article 23 LTC, access to the information can be given after having carried out a reasoned weighting of the public interest in the disclosure of information and the right to data protection of interested persons taking into account, among others, the circumstances listed in the same article 24.2. These circumstances are:

- "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."*

Although article 2 of the LTC provides that the exercise of the right of access is not conditional on the concurrence of a personal interest, it is not subject to motivation and does not require the invocation of any rule, knowing the motivation for which the person claiming wants to obtain the information may be a relevant element to take into account. In the case at hand, the person making the claim participated in the selection process in respect of which he is requesting the information, as can be seen by consulting the information published by the General Directorate of Public Service in this regard. However, this person, in his claim, does not expressly state a specific purpose or argue his status as an interested person in the procedure to access said information. In any case, the general purpose of the transparency regulations can be taken into account, which aims to control the actions of public administrations and to know how public decisions are made. Thus, article 1.2 LTC establishes that the purpose of the law is *"to establish a system of relationship between the people and the public administration and the other obliged subjects, based on the knowledge of the public activity, the incentive of the citizen participation, the improvement of the quality of public information and administrative management and the guarantee of accountability and responsibility in public management."* It is in this context that it is necessary to assess whether or not access to the claimed information would be justified.

It must be taken into consideration that personnel selection procedures are competitive procedures that are generally governed by the guiding principles of publicity and transparency and these principles must be connected to those of equality, merit and ability.

The requested information can allow the person claiming to have elements to verify the suitability of the selection procedure to the regulations governing it and to be able to control the action of the public administration responsible for its processing. It is therefore a matter of control of the functioning of the public administration in a procedure such as that of personnel selection which is governed, as has been explained, by the principles of publicity and transparency.

In the case at hand, it must be taken into account that the same transparency regulations provide for certain active advertising obligations regarding personnel selection processes. Specifically, article 9 of LTC establishes that the administrations must make public the information relating to the institutional organization and the organizational structure which

must include: "the calls for proposals *and the results of the selective processes for provision and promotion of the staff*" (article 9.e).

This forecast has been developed by article 21 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereafter RLTC), which establishes:

"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 proposals 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."

Regarding the procedure to which the claim corresponds, the rules of the call provide for the publication of information relating to the participants in each of the procedures of the selection process. In this sense, base 8.1. provides for the publication of the admitted and excluded persons, base 8.3 establishes that the Qualifying Court must publish the Provisional Merit Assessment Agreement of the applicants, and base 8.4 provides for the publication of the final assessment of the merits. Also, base 10 of the call establishes that the order of points obtained in the selection process must be published. Thus this base 10 establishes:

*"The Qualifying Tribunal will publish, jointly with the Agreement on the definitive evaluation of merits or, as the case may be, jointly with the publication of the results of the test certifying the participation requirements of knowledge of the Catalan language and/or in Castilian, **the results of the merit competition, with the ordered final score and the nomination proposal for the applicants who, taking into account the number of places offered in each case, have passed each of the selection processes called for.** "*

Base 12.2 of the call establishes the procedure for awarding jobs on a provisional basis, in particular it establishes:

"Applicants proposed for appointment and in relation to whom all the checks of compliance with the participation requirements have already been carried out, will be awarded, on a provisional basis, a basic job corresponding to the body, scale or specialty

in respect of which they have requested their participation and have been proposed, in accordance with the following rules:

a) In relation to applicants who already have the status of temporary employees of the same body, scale or specialty in respect of which they have been proposed for appointment, they will be awarded directly the base position they occupy on an interim basis.

*b) In the rest of the cases: the person in charge of the General Directorate of Public Function will convene a public act of awarding positions and will make public the list of base positions that are offered; and the award, provisionally, **will be made according to the order of points obtained in the corresponding selection process.**"*

Regarding the information claimed, although the order number of the people assigned to each of the places in the list of jobs in the call allows the people who have been assigned to each of the places to be identified without disproportionate effort of the work relationship based on previously published information, precisely because of this fact that it is already published information would constitute an element favorable to access to information.

In addition, as stated, information about the people finally selected in a personnel selection process is information subject to active publicity. Therefore, from the point of view of data protection regulations, there should be no inconvenience in providing the person claiming information that could make identifiable the people who have been selected in the process and who have occupied the different places in the list of places in the call.

With regard to the possible damage that the dissemination of this information could entail for the interested parties, it must be said that the people who participate in competitive competition processes are aware of the principle of publicity and transparency that govern this kind of procedure and have certain expectations of privacy regarding the information that must be published. In short, it does not seem that facilitating access to the information that has been the subject of dissemination during the course of the selective process that may be contained in the file should have particular relevance with regard to the right to the protection of personal data of the affected persons, particularly when the person requesting access has participated in the selection process, so it would be likely that it was already known to them.

In short, the result of the weighting of rights in the case at hand is favorable to access to the public information claimed.

conclusion

The data protection regulations do not prevent the claimant from accessing the claimed information relating to the list of jobs corresponding to the call (...), with indication of the date of creation of the position and periods in whose places have been covered by interims, including the information relating to the order number of the people assigned to each of the places.

Barcelona, March 9, 2023

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