

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 refusal by a City Council to request access to certain information relating to the accidental appointment of the auditor

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 a claim submitted in relation to the refusal by a City Council to the request of access to certain information relating to the accidental appointment of the comptroller.

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 November 16, 2022, a person presents a letter on behalf of a union, and which it appears also holds the status of staff delegate, before a City Council, in which he requests certain information regarding the appointment with the accidental nature of the local police inspector as auditor, in the period of October 2022.

In particular, it requests the following:

"[...] I was given a copy of the report issued by the General Directorate of Local Administration, regarding the authorization of Mr. [...], police inspector group A subgroup A2, to accidentally occupy the job of auditor of the City Council [...]. I am informed of all the completarias remunerations that have been collected in the period that, performed the functions of accidental auditor, as well as all the intervention reports issued during the month of October 2022".

2. On December 18, 2022, the applicant submits a claim to the GAIP in which he reiterates the terms of his application and bases his claim on the right to information and consultation recognized by labor regulations in workers' representatives and union delegates.

3. On January 3, 2023, the GAIP sends the claim to the City Council, 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 applicable, specifying the third parties affected by the claimed access.

4. On January 20, 2023, the City Council sends a Decree of the Mayor's Office based on which it is decided to reject the request for access considering that *"[...] your request does not fit in any of the rights or functions provided for in the rule. In any case, this is a question regarding the City Council's power of self-organization and the procedure for forming administrative acts".*

5. 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

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 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 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).

In the case we are dealing with, in which certain information is requested regarding the appointment to accidentally occupy the position of City Council auditor, information regarding remuneration supplements and access to reports issued in a certain period of time , this information must be considered public for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC), as it is documentation in their possession as a result of their powers.

It should be noted that, according to the documentation sent, the claimant holds the position of union delegate. And, according to what follows, it seems that he also holds the status of staff delegate in the City Council, but it is not clear if he holds this position on behalf of civil servants or public workers with employment contracts.

The claimant, when requesting the City Council to access public information, bases his claim on the basis of the LTC, and in the claim presented to the GAIP, bases it on the provisions of Organic Law 11/ 1985, of August 2, of freedom of association (LOLS) and of Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law (ET).

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

Therefore, in accordance with the provisions of the first additional provision of the LTC, it is necessary to analyze whether through the trade union regulations and, where appropriate, the regulations of the statutory regime of public officials or labor, and additionally the LTC, the claimant would be able to access said information.

III

Law 11/1985, of August 2, on trade union freedom (LOLS) recognizes the right of trade union delegates to information in article 10.3.1 in the following terms:

" Union delegates, in the event that they are not part of the works council, will have the same guarantees as those legally established for members of works councils or representative bodies established in public administrations, as well as the following rights except for what could be established by collective agreement:

1.º Have access to the same information and documentation that the company makes available to the works committee, union delegates being obliged to keep professional secrecy in those matters in which they legally proceed.

[...]."

In accordance with this provision, with regard to access to information, trade union representatives are recognized as equivalent to members of the works committee or representative bodies in public administrations.

Irrespective of the fact that, in the case in question, there are not sufficiently clear elements to be able to state whether the person making the claim is a staff delegate and, if applicable, whether he exercises representation in respect of civil servants or public workers with employment contracts, due to the fact that she holds the status of trade union representative, she must be recognized with the same rights of access to information as the members of the works committee or of the representative bodies in the public administrations, in accordance with the article 10.3.1 of the LOLS.

Based on this basis, the analysis of the access request requires taking into account the information access regime established by Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (hereafter, EBEP), as well as of the ET. And this without prejudice to the fact that the provisions of the transparency regulations must additionally be taken into account, in accordance with the first additional provision of the LTC.

These rules attribute to the boards or staff delegates (art. 39 EBEP), as well as to the staff delegates or Company Committee (art. 62 and 63 ET), as specific bodies representing civil servants and public workers with employment contract respectively, certain functions for the exercise of which the right of access to certain information is recognized, which could include personal data of the workers (in essence, the matters collected in articles 40 of the EBEP and 64 of the 'ET, respectively).

These forecasts may justify access to certain information relating to the organization and administrative structure of the corporation, or to be informed or consulted from the point of view of the monitoring of compliance with the rules in force regarding working conditions, prevention of occupational risks, Social Security and employment, and exercise, if necessary, the appropriate legal actions before the competent bodies. However, neither the EBEP nor the ET has a specific regulation that enables access to information related to the report issued by the General Directorate of Local Administration, regarding the authorization of the inspector of the police for accidentally occupying the post of City Council inspector, as well as all the additional remuneration he has received while he has carried out the functions of accidental inspector, and the reports he has issued in the period that has held this position.

Consequently, it will be necessary to analyze the claimant's claim based on the regime of the right of access to public information provided for in the transparency legislation, given its supplementary applicability (DA 1a, section 2, of the LTC). To this end, it should be borne in mind that the right of access to public information is not absolute, and may 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.

IV

The person claiming requests the City Council to access a copy of *"[...] the report issued by the General Directorate of Local Administration, relating to the authorization of [...], inspector of the police group A subgroup A2, to accidentally occupy the position of comptroller of the City Council of [...]. I am informed of all the complementary remunerations that have been collected in the period that, performed the functions of accidental auditor, as well as all the intervention reports issued during the month of October 2022"*.

Taking into account the different information that the claimant seeks to access and, in particular, given that different categories of data may be affected in each case, the analysis of the possibility of the intended access will be carried out separately, it is that is to say, access to the report of the General Directorate of Local Administration, the additional remuneration received by the official appointed to accidentally occupy the position of auditor and access to the reports issued will be analyzed separately in the month of October 2022 .

Firstly, we refer to the possibility of accessing a copy *"[...] of the report issued by the General Directorate of Local Administration, relating to the authorization of [...], inspector of the police group A subgroup A2, to accidentally occupy the position of auditor of the City Council [...]."*

Before entering into the substantive issue, it is necessary to emphasize the fact that it is understood that the person making the claim is referring to the report issued by the General Directorate of Local Administration within the framework of the provisions of Decree 195 /2008, of October 7, which regulates certain aspects of the legal regime of civil servants with state qualifications of the local entities of Catalonia in relation to Royal Decree 128/2018, of March 16, by which regulates the legal regime of local government officials with national qualifications.

In particular, it seems that the person making the claim is referring to the report that the General Directorate of Local Administration referred to in article 30 of Decree 195/2008:

"1. When it is not possible to provide the position through the procedures provided for in the previous articles of this Decree, the Director General of Local Administration, upon proposal of the local entity, may accidentally appoint an official of the same sufficiently qualified local entity.

2. In the case of vacancy of the position, commission of services or special services of the holder, prior to this appointment, they must request a report to the General Directorate of Local Administration on the existence of any civil servant with state qualification interested in the provision of the workplace through the procedures provided for in articles 27, 28 and 29 of this Decree.

3. Notwithstanding the provisions of paragraph 1 of this article, when the circumstances that give rise to the accidental appointment do not in any case exceed three months, which will not be extendable or renewable, this appointment will be made by the president or the president of the corresponding local entity, who will report to the plenary session of the corporation in the first session that takes place."

The General Directorate of Local Administration has published, in relation to the requirements on advertising in applications for non-definitive coverage of positions reserved for civil servants of local administration with national qualification, an information note (consultable at this [link](#)) of which the following should be highlighted, regarding accidental appointments:

"[...] prior to the processing of this request, the impossibility of filling the position with local government officials with national qualification must be proven.

[...] once the vacant position is published for its non-definitive provision, [...], as a result of the non-existence of any candidate/atta, the way will be open for its coverage through an accidental or interim appointment , in accordance with articles 52 and 53 of Royal Decree 128/2018, of 16 March, which regulates the legal regime of local government officials with national qualification.

The local corporation interested in the accidental or interim appointment must send its request to the General Directorate of Local Administration together with the accreditation of the impossibility of providing the position through FHN personnel. This request will be channeled through the specific service PRE-Application for non-final provision of FHN positions configured in the catalog of procedures of the Extranet of the Catalan Administrations (EACAT), in accordance with the requirements listed in the annex to this note.

For this purpose, the local corporation will address to the General Directorate of Local Administration, together with the corresponding application for appointment, the accreditation of the publicity of the coverage of the vacant position and the absence of requests for civil servants of local administration career with national qualification to occupy it.

Accidental and temporary appointments will be resolved by the General Directorate of Local Administration, in accordance with the reasoned proposal formulated by the local corporations, as long as and when the impossibility of providing the job reserved by civil servants is proven in the file of Local Administration with national qualification.

These provisions relating to prior advertising and the verification of the existence of interested FHN personnel will not apply to accidental appointments for absences of less than one month regulated in paragraph 4 of article 52 of Royal Decree 128/2018"

It should be borne in mind that the specific content of the report to which the claimant intends to access is unknown, however, it seems clear that from the point of view of data protection regulations, among the data affected in this report will be the identification data of the person who holds the position or exercises the functions of general management of Local Administration and those relating to the official person proposed by the local corporation to accidentally occupy the position of controller. Nor is the possibility that the data of who holds the presidency of the local corporation is included.

At the outset, it should be borne in mind that article 24.1 of the LTC establishes that " 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 the protection of personal data or other constitutionally protected rights must prevail ."

Therefore, regarding the merely identifying information of those who hold the position or exercise the functions of general management of Local Administration, in principle there should be no impediment in giving access to the person making the claim, given that the report to which he seeks access was issued in exercise of the functions established by the regulations set forth and the fact that no circumstance is apparent from the file sent from which it should be considered that the protection of personal data or other constitutionally protected rights should prevail.

To this end, it is necessary to take into account the provisions of article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information (from now on, RLTC), by which it is necessary to understand as merely identifying data those 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, referred to the staff at the service of the public administrations, senior officials and managerial staff of the public sector of public administrations .

With regard to the data relating to the official who is authorized in this report to accidentally occupy the post of auditor of the City Council and, where appropriate, that relating to the president of the local corporation, the 'analysis of the possibility of access must be carried out in accordance with what is provided for in article 24.2 of the LTC, that is, through the weighting between the public interest of the information alone tender and the right to data

protection of the affected persons, all this taking into consideration the circumstances that may occur in the case being analyzed (such as the time that has passed, the purpose of the access, the fact that it may affect people's safety...).

In accordance with this provision, the purpose is one of the elements that can be taken into account in order to carry out the weighting, without prejudice to the fact that article 18.2 of the LTC provides that the exercise of the right of access does not it is conditional on the concurrence of a personal interest, it is not subject to motivation nor does it require the invocation of any rule. For the purposes of carrying out the weighting, knowing the motivation for which the person claiming wants to access the information can be a relevant element to take into account.

However, according to the information contained in the file, the claimant does not state the specific reason for which he is requesting access, beyond referring to the powers that the regulations grant to representative bodies of the staff. Therefore, this element cannot be considered for the purpose of carrying out the weighting in accordance with the provisions of article 24.2 of the LTC.

However, regardless of the fact that the person has not stated the reasons for their request, from the perspective of the general purpose of the transparency regulations, that is to say, the possibility of offering tools to citizens to to the control of the actions of the public authorities, access to the report of the General Directorate of Local Administration can allow control of whether the City Council has carried out the procedure referred to in the regulations set out above in relation to the provision of positions reserved for local government officials with national qualification.

And, this is even more evident in the case at hand, since the person making the claim holds the position of trade union representative, in relation to the work of surveillance and control that the regulations recognize for the representative bodies of civil servants and public workers with employment contract.

But, regardless of the purpose of the access, it must be taken into account that the personal data affected by the request, and which are contained in the report issued by the General Directorate of Local Administration, are the identifiers of the person official who is accidentally authorized or appointed to take up the position of auditor of the City Council and, where appropriate, those of the president or president of the local corporation.

In relation to this, and without prejudice to the principles of publicity and transparency that must govern personnel selection processes in the field of public administrations, on the one hand, and in the general electoral procedure, on the other, from the strict point of view of the LTC, it should be noted that the article 9.1 of the LTC foresees that the Administration must make public the results of the selective processes for the provision and promotion of personnel (section e) and the list of senior positions (section f).

Regarding the data of the president or president of the City Council, article 28 of the RLTC establishes that the administration must make public the identification by means of names, surnames, the position and the area or the organs in which they participate, as well as the work or professional profile and the telephone and electronic channel of professional contact.

And, as for the official person authorized to accidentally occupy the position of auditor of the City Council, article 21.2 of the RLTC establishes that it is necessary to make public the person finally selected in accordance with the criteria established in the matter of Data Protection.

Consequently, it does not seem that the regulations for the protection of personal data can prevent access to this information, given that the effect that access to this information may have through the right of access to public information a priori it must not affect to a greater degree the rights of the people affected by the request that occurs through active advertising.

v

The person making the claim also requests to know the additional remuneration received by the official appointed by accident to perform the functions of the City Council auditor.

To the extent that this information exceeds the merely identifying data referred to in article 24.1 of the LTC, the possibility of accessing this information requires prior analysis through the weighting referred to in article 24.2 of the LTC, between the public interest in disclosure and the rights of the affected persons.

From the point of view of the transparency regulations, it is worth remembering the provisions regarding active advertising that, with regard to remuneration, are established by article 11.1 of the LTC.

Specifically, article 11.1.b) of the LTC establishes that "*remuneration, compensation and per diems, the activities and assets of members of the Government, of high-ranking officials of the Public Administration and of the managerial staff of public bodies, societies, foundations and consortia, and the compensation they must receive when they cease to hold office*".

And, as for the rest of the staff, article 11.1.e) of the LTC obliges only to publish "*The general information on the remunerations, compensations and allowances received by public employees, grouped according to the levels and bodies*".

So, while with regard to the remuneration received by senior public administration officials, the regulations establish that they must be published individually for each job and for any type of remuneration, compensation or allowance, as for the remuneration received by the rest of the workers, this information must be grouped according to the levels and bodies.

Article 4.2.b) of the LTC provides that, for the purposes of what is established by law, they are considered senior positions, in the service of the local administration, "*the local representatives and the holders of superior and managerial bodies, in accordance with what is established by local regime legislation*".

In accordance with what this Authority has previously highlighted, the transparency obligations that affect high-ranking officials can be extended with respect to requests for access to information that affects personnel in positions of trust, of special responsibility within the organization, of free appointment, or that entail a high level of remuneration. And, in relation to this, this Authority has considered that the importance of the functions entrusted to the municipal auditors and their significance in the organization cannot be ignored, criteria

that must be assessed to consider this job as special responsibility , and in this sense comparable also for purposes of transparency to the high positions of the Public Administration.

In this sense, the statement of reasons for Royal Decree 128/2018 sets out:

"[...] Likewise, reinforce and clarify the functions reserved for Local Administration officials with national qualification, understanding that they are basic for the functioning of Local Corporations, especially the supervisory function, to achieve an economic control- more rigorous budget, in the framework of the development of article 213 of the revised text of the Law regulating Local Finances, approved by Royal Legislative Decree 2/2004, of March 5, which will contribute to improving decision-making by the positions elected in the exercise of the representative mandate that they have constitutionally entrusted.

Guarantee greater professionalism and efficiency in the exercise of reserved functions.

To allow a more effective and homogeneous management of this group throughout the national territory, given the importance of the functions they perform in the Local Corporations, and their impact on the general interest [..]"

For these reasons, the Authority has considered (among others in reports IAI 31/2022 and IAI 3/2019, which can be consulted on the APDCAT website www.apdcat.cat) that the access regime to the remuneration of personnel who occupy positions of special trust, of special responsibility within the organization or at a high level in the organization's hierarchy, of free appointment, or which entail a high level of remuneration, may be equivalent to the high officials.

Consequently, with respect to the intervening person, although the law does not expressly provide for the publication on the transparency portal of their remuneration, in the weighting of the rights that must be done with respect to requests for access to information, in these are jobs that, due to their uniqueness within the organization, and also due to the level of remuneration they are usually associated with, knowledge of their remuneration may be relevant for the control of the use of public resources and, therefore , the result should be in favor of the public interest in its disclosure.

In addition, and in any case, it must be taken into account that in accordance with the provisions of article 74 of the EBEP, public administrations must structure, and make public, their organization through position relations of work or other similar organizational instruments that include, at least, the name of the positions and, among other information, their complementary remuneration.

At the local level, Decree 214/1990, of July 30, which approves the Regulation of personnel in the service of local entities (RPEL) establishes in article 30.2.d) that for each position of work, in the list of jobs, it must be indicated, at least and among others, *"the assigned destination supplement and its organic level, as well as, where appropriate, the corresponding specific supplement"*.

Based on these articles, it follows that the requested information regarding the perceived complements should be accessible through the list of jobs.

On the other hand, it is necessary to insist on the fact that the regulations provide for the need to advertise the appointment of staff, in which the job to which they are assigned is identified and which may incorporate other information relating to the characteristics of the position (group, level, category, add-ons...), or this information can be obtained through the list of jobs. Therefore, there is a reasonable probability that, based on active advertising obligations, the remunerative information associated with a site can be linked, even if indirectly, to a specific person, as is the case at hand.

According to what has been stated, the person claiming has not stated the specific reason for which he is requesting access, but it is clear that the intended purpose is the exercise of surveillance and control that recognizes the regulations for the representative bodies of civil servants and public workers with employment contracts. To this end, it may be relevant for the person making the claim to access this information in order to control the City Council's remuneration system.

But, in any case, this purpose would not be opposed to the general purpose of the transparency regulations, that is to say, the control by citizens of certain aspects of the activity of the administrations. In particular, when it is a job that, due to its uniqueness within the organization, and also due to the level of remuneration that is usually associated with it, knowledge of its remuneration can be relevant for the control of the use of resources public

With regard to the intrusion into the right to data protection of the affected person, that is to say, the official appointed accidentally to occupy the position of auditor of the City Council, it is clear that access to this information it can affect not only your professional or work sphere, even the strictly personal or the patrimonial sphere, to the extent that it allows you to recognize not only data relating to your occupation but also others that may affect your life private more directly such as the approximate level of income from their work. However, in line with what has been analyzed up to this point in relation to the regime of active advertising, it does not seem that in the case in question there are circumstances from which it can be considered that the interference with the right to data protection, when communicating this information to the trade union representative, is superior or exacerbates that caused by the application of the active advertising regime.

In short, in the case at hand, it would not seem justified to deny the intended access to the retributive supplements, to the extent that the provisions relating to active advertising would already allow this information to be known without the effect being greater.

VI

The person making the claim also requests access to *"[...] all intervention reports issued during the month of October 2022 "*.

It should be noted that there is no information available in relation to the exact content of the reports, if any, issued by the person who has accidentally held the position of City Council auditor, beyond what can be foresee taking into consideration the functions that correspond to the controlling officials, and especially with regard to the control and internal auditing of the economic-financial and budgetary management and the accounting of local corporations (art. 4 of Royal Decree 128/2018).

Given the nature of the information requested, from the point of view of the limits to data protection provided for in the transparency regulations, it cannot be ruled out that there may be specially protected data in the terms provided for in article 23 of the LTC (*"[...] those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal offenses or administrative that do not entail a public reprimand to the offender [...]"*), taking into account that among the functions of those who exercise the intervening function is that of controlling subsidies and public aid.

In the event that there is information of this type, or any other of those provided for in article 23 of the LTC, and in the absence of express written consent from the owner, or the information has been made manifestly public for the affected person himself in the case that it refers to ideology, trade union affiliation, religion or beliefs (art. 15.1 of the LT), access should be limited.

Beyond the specially protected data referred to in article 23 of the LTC, in accordance with what is provided for in article 24.1 of the LTC, and what has been set out above, in principle it does not pose no problem in which the person making the claim has access to the merely identifying information of the person exercising the intervenor function in the City Council.

However, it should be borne in mind that the possibility of accessing the rest of the information will depend on the specific content of each of the reports. To this end, it must be agreed that on the basis of what is provided for in articles 2.1 and 4.1 of the RGPD, in relation to what is established in recital 16, there must be no inconvenience from the perspective of the regulations of data protection by providing the person making the claim with information that does not affect personal data.

And, with respect to the personal data that are different from those referred to in article 23 of the LTC and article 24.1 of the LTC, access to which has already been referred to above, the possibility of access must be evaluated from the point of view of the criteria referred to in article 24.2 of the LTC, that is, through the weighting between the public interest of the requested information and the right to data protection of the affected persons, all this taking into consideration the circumstances that may occur in the case being analyzed (such as the time that has passed, the purpose of the access, the fact that it may affect the people's safety...).

conclusion

The data protection regulations do not prevent access to a copy of the report issued by the General Directorate of Local Administration, relating to the authorization of an official to accidentally occupy the workplace of controller in the City Council and the information related to the complementary remuneration of this job.

However, access to the reports issued by those who have performed the supervisory function accidentally will depend on the personal data that is affected, taking into account its content and the application of the limits relating to data protection to which it refers articles 23 and 24 of the LTC, in the terms that have been set forth.

Barcelona, March 20, 2023

Machine translation