

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 related to remuneration

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 remuneration.

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 9, 2022, a person submits a request addressed to a City Council in which he requests access to a *"[...] copy of the payroll decrees and variable data of all City Council employees from the months of January 2022 to October 2022"*. According to what is clear from the application, the applicant holds the status of official staff delegate and the presidency of a trade union section in the City Council.
2. On December 13, 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 of access to public information provided for in the regulations of transparency, as well as the right to information and consultation recognized by trade union regulations.
3. On February 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 March 2, 2023, the City Council sent a report to the GAIP in which it stated, in summary, *"[...] that what is requested is not part of its powers in the terms indicated and also contains information protected identifiable under the terms of article 23.2 of Law 19/2014, of December 29"*.
5. On March 7, 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 relating to the mayor's decrees related to City Council staff payrolls, 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), being documentation in their possession as a result of their activity or the exercise of their functions.

It should be noted that, in requesting the information from the City Council, the person making the claim stands as a representative of the civil service staff and, in addition, president of the trade union section of the SPL-CME union of the City Council, and invokes the his right of access to public information on the basis of the provisions of the LTC and article 10 of Organic Law 11/1985, of August 2, on freedom of association (from now on, LOLS). In relation to this issue, although the file sent does not contain any document from which it can be determined whether the person claiming certainly holds the status of a representative of civil servants and, at the same time, a union representative, this issue does not seem to be must be called into question insofar as the City Council does not contradict it in the report sent to the GAIP and, moreover, because the denial resolution is based on the analysis of the precepts of Royal Legislative Decree 5/2015, of October 30, by which the revised text of the Law on the Basic Statute of the Public Employee is approved.

It should be noted that 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, with supplementary, by this law"*.

Consequently, it is necessary to analyze whether through the trade union regulations and, where appropriate, the regulations of the statutory regime of public officials or the labor regulations, and additionally the LTC, the person claiming would be able to access said information .

III

At the outset, before the analysis of the substantive issue, it is appropriate to mention certain issues that affect the information that is the subject of the claim. To this end, it should be remembered that the object of the request is access to the *"[...] copy of the payroll decrees and variable data of all employees of the City Council for the months of January 2022 to October 2022"*.

Firstly, it must be noted that it is not clear what the person making the claim is referring to when he refers to the variable data of all City Council employees.

Now, taking into account that he is requesting access to the copy of the mayor's decrees approving the payroll, it can be inferred that he is referring to the information relating to the variables or variable concepts of the payroll that may lead to a change in remuneration and which originate in different circumstances that are individual to each worker (City Hall staff), such as overtime work, causes of contract suspension (for example, leave or 'exercise of representative public office, insofar as it affects a period shorter than that of settlement and payment of payroll) or other more sensitive circumstances from the point of view of data protection regulations, for example temporary impediment to work due to common or professional illness or accident (temporary incapacity) or the changes resulting from the exercise of the right to strike by the staff.

On the other hand, it is not clear from the information that is available what the specific content of the mayoral decrees to which the person making the claim refers.

In particular, it is unknown if the mayor's payroll approval decrees affected by the access request include, in turn, the information related to the variable concept that causes the payroll to be modified. In addition, on the other hand, there are also no elements that allow us to rule out that these decrees also include other information that is not related to your request.

However, from what the City Council sets out in the report sent to the GAIP, and the grounds for its decision to deny access to the person making the claim, it can be inferred that all the information sought access is included in the mayor's decrees. For this reason, the analysis that will be carried out will be done from the perspective that all the information requested is contained in the decrees of the mayor's office.

IV

According to the information contained in the file, it appears that the person making the claim has the status of a union representative, and also, a representative of the City Council officials.

Starting from this basis, at the outset, it must be taken into account that union delegates are recognized with the same legally established guarantees for members of company committees or representative bodies established by public administrations. In particular, for the purposes that interest us in this report, article 10.3.1 of Organic Law 11/1985, of August 2, on Freedom of Association (LOLS), recognizes, among others, the right to:

" 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."

But, in addition, in the case we are dealing with, the person making the claim also holds the position of representative of the City Council officials.

Therefore, 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 Royal Legislative Decree 2/2015, of October 23, which approves the revised text of the Statute Law of Workers (hereinafter, 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 it recognizes the right to access certain information, which could include personal data of the workers.

Article 40.1.a) of the EBEP, provides that the Personnel Boards and personnel delegates must receive information on *" the personnel policy, as well as on the data referring to the evolution of the retributions, probable evolution of the employment in the corresponding field and performance improvement programs .* However, there is no specific regulation in the EBEP that would enable individual access to the requested information.

For its part, article 64.1 of the ET provides that *" The works committee will have the right to be informed and consulted by the employer on those issues that may affect the workers, as well as on the situation of the company and the evolution of employment in the same, in the terms provided for in this article "*. And, he adds that information is understood as *" the transmission of data by the employer to the company committee, so that it has knowledge of a certain question and can proceed to its examination [...]"*

Next, sections 2 to 5 of this article 64 of the ET contain specific forecasts in relation to the questions or subjects on which the works councils have the right to receive information on a quarterly basis (article 64.2 of ET), annually (article 64.3 of the ET) and others when applicable (article 64.4 and 5 ET).

All this for the purposes of exercising, among others, the function of "*monitoring compliance with the current labor, social security and employment standards, as well as the rest of the agreements, conditions and company practices in force, formulating, in his case, the appropriate legal actions before the employer and the competent bodies or courts*" (article 64.4 and 5 of the ET).

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 that affects the remuneration of City Council staff, insofar as they may indirectly be indicative of organizational issues and the administrative structure of the corporation, and also from the point of view of the monitoring of compliance with current regulations regarding working conditions, individual rights of workers, prevention of occupational risks, social security, and proposing or taking 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 mayoral decrees approving the payroll or other information related to the variable concepts that affect the staff payroll .

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.

v

In accordance with what has been stated, the claimant requests from the City Council a copy of the mayoral decrees approving the payroll, corresponding to the time period between January 2022 and October of 2022, both included, which would contain the information relating to the concept, and corresponding amount, by which the payroll of the City Council's staff is modified.

Before analyzing the possibility of access, however, it should be noted that the object of the access request is considered to affect all City Council staff on whom it has been decided by decree the approval of the modification of its payroll, including the senior positions.

In relation to senior officials, article 7 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC) establishes the following:

"1. For the purposes of this decree, they are considered high-ranking officials and local management personnel, in any case, elected officials and the holders of bodies that exercise management or executive functions of a superior nature, adjusting their performance to the

guidelines set by the governing body of the corporation, in accordance with the provisions of the local regulations.

2. It is up to each local administration to determine, in accordance with its organizational rules, the senior positions and its own management staff."

It should be noted that this Authority has previously considered that the transparency obligations that affect high-ranking officials can be extended with respect to requests for access to information that affect personnel occupying positions of trust and special responsibility within the organization, freely appointed, or with a high level of remuneration, such as secretaries or municipal auditors.

Once it has been established what the object of the claim is, it is appropriate to place the limits established in the LTC relating to the protection of personal data, that is to say, the provisions of article 23 and 24 of the LTC.

Article 23 of the LTC provides that *"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, the 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, unless the affected expressly consents to it by means of a written document that must accompany the request"*.

In the event that the intended access does not affect particularly protected personal data referred to in article 23 of the LTC, it is necessary to comply with the provisions of article 24 of the LTC, which provides for the Next:

"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. [...]"*

At the outset, to the extent that the information that the claimant seeks to access exceeds the mere identification of City Council staff, the analysis must be carried out in accordance with the provisions of article 24.2 of the LTC, that is to say, it is necessary to carry out a weighting between the public interest of the requested information and the right to data protection of the persons affected, all this taking into consideration the circumstances that may concur in the case being analyzed (such as the elapsed time, the purpose of the access, the fact that it may affect the safety of people...).

Article 11 of the LTC regulates the information related to economic and budgetary management that the administration must make public in application of the principle of transparency, and refers to information related to remuneration, with regard to senior positions, in section 1.b), and with respect to the rest of public employees, in section 1.e).

As for high-ranking officials, article 11.1.b) of the LTC provides that the administrations must make public *"The remuneration, compensations and allowances, the activities and assets of the members of the Government, of the high-ranking officials of the Public Administration and of the management staff of public bodies, societies, foundations and consortia, and the compensation they must receive when they cease to hold office"*.

In relation to this provision, article 31 of the RLTC establishes the following:

" 1. For the purposes of letter b) of article 11.1 of Law 19/2014, of December 29, they must be made public, with identification of the name, surname and position, on a monthly basis, both the remuneration annual salaries of the senior public administrations and the management staff of their public sector entities, in accordance with the current year's remuneration tables, such as the compensations and per diems they have actually received.

2. The information relating to variable remuneration must be published, first as the maximum expected in relation to the current financial year, and subsequently, once the financial year is closed, with an indication of the amounts actually received for this concept .

3. For the purposes of this precept, indemnification when ceasing to exercise the position is understood to mean the amounts received for cessation in the exercise of the position or for termination of the employment relationship, and is understood as per diem and other indemnities the amounts received referred to in article 25.1, letters b) and c), of this decree."

And, as for the rest of public employees, article 11.1.e) of the LTC establishes that the administration must make public *" general information on the remuneration, compensation and allowances received by public employees, grouped according to of levels and bodies "*.

And, in turn, article 25.1.a) of the RLTC establishes that remuneration is the financial compensation that can be received for the work carried out and adds the following:

"Information must be given on the overall gross annual remuneration of the different bodies and levels, with details of the basic remuneration and the supplements that correspond according to the regulations, and the agreement or non-agreements that apply. In this sense, the remuneration tables of the personnel in the service of the public administrations must be published, with an indication of the basic and complementary remunerations, in the case of civil servants, and with an indication of the basic remunerations, complement of seniority, extraordinary payments and other supplements and specific bonuses according to the agreement or outside the agreement, in the case of labor personnel. "

On the basis of these articles, access to the mayor's decrees approving the payroll, and the information relating to the concepts and modifications on staff remuneration, exceeds the information referred to in the transparency regulations which must be made public through active advertising. This element can be relevant in the weighing between the public interest of the information and the right of the people affected.

Another of the elements referred to in article 24.2 of the LTC to carry out the weighting is the purpose of the access. To this end, 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 claiming wants to obtain the information can be a relevant element to take into account in the weighting.

As can be seen from the terms of your request for access, and subsequent claim, the purpose of the person making the claim is to exercise the function of monitoring and controlling legality, which purpose can obviously justify the access to the information requested to verify, for example, that the reductions or increases in the payroll are in line with the regulations that regulate the remuneration regime for local government staff. And it may still be of greater interest to have this information regarding the high positions of the City Council, as they are jobs with uniqueness within the organization, and also because of the level of remuneration they usually bring associated.

In addition, this purpose would not be opposed to what the transparency regulations pursue, that is, the control by citizens of certain aspects of the activity of the administrations.

Now, from the point of view of the intrusion into the right to data protection of City Council staff, including senior officials, it is clear that having this information can affect their professional or work sphere, even patrimonial, but the effect on your strictly personal sphere can also be of particular relevance, insofar as it can allow you to know data that can directly affect your private life, such as, if the reason for the reduction of the payroll is the enjoyment of paternity leave, or it is agreed to increase the payroll for the approval of an advance requested by a public employee.

For this reason, and especially due to the fact that the exact content of the mayor's decrees to which it is intended to be accessed is unknown, taking into account the implications for the private life of City Council staff that the disclosure of this may have information, it is considered that in the case at hand there are no circumstances from which it can be concluded that the interest of the person claiming access to this information should prevail over the data protection of the staff of the City Council, to the extent that knowing the circumstances that have motivated the modification of the payroll may lead to a significant invasion of your private life.

And, obviously, this also includes limiting access to the information referred to in article 23 of the LTC, in the sense that it is necessary to deny access to these categories of data that may be included in the decrees of the mayor's office, unless the affected persons have expressly consented in writing, or, in accordance with the provisions of article 15.1 of the LT, in the event that it is data that reveals ideology, trade union affiliation, religion or beliefs, when the affected person has publicly disclosed the data prior to the access request and, in the case of data that refer to racial origin, health or sexual life, genetic or biometric data or contain data relating to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, that access is protected by a rule with the rank of law.

However, without prejudice to what has been stated, given the provision of article 20.2 of the LTC by which the limits must be interpreted restrictively in favor of this right, as far as possible, yes that it would be in accordance with data protection regulations to grant access

to the mayor's decrees that are intended to be accessed anonymously, that is, without the affected City Council staff being directly identified or containing information that the identifiable face (such as the name of the place, professional classification group, body or scale, etc...).

To this end, it should be borne in mind that article 70.6.a) of the RLTC establishes that anonymization is *"the elimination of the personal data of the natural persons affected contained in the information and any other information that may allow them to be identified directly or indirectly without disproportionate effort, without prejudice to being able to maintain, where appropriate, the merely identifying data of the positions or personnel in the service of the public administrations that dictate or intervene in the administrative act"* .

A priori, taking into consideration the number of staff in the service of the City Council that appears in the list of jobs, it is considered that anonymization may be an appropriate measure that would allow access to the mayor's decrees without sacrificing the privacy of the affected persons and, at the same time, would allow the person making the claim (union delegate and representative of the workers) to exercise their function of monitoring and controlling the legality in relation to the fact that the reductions or increases in the payroll are justified legally

All this, without prejudice to the fact that at a later time, and depending on the circumstances that arise, access to certain more specific information may be justified, because an anomalous pattern has been detected or any other circumstance that could motivate its access, such as now, in order to assess and take the legal actions that are considered appropriate.

VI

Regarding the data relating to the mayor/mayoress, it is necessary to comply with the provisions of article 24.1 of LTC, from which access must be given to information directly related to the organization that contains merely identifying personal data, unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail.

In accordance with article 70.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information, are understood as merely identifying data *"[...] 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 "*. However, *" In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document and the handwritten signature. If the signature is electronic, the electronically signed document must be published in such a way that the properties of the electronic certificate used for the signature cannot be accessed ."*

And, lastly, regarding the rest of the information that, if applicable, may be contained in the mayor's decrees, and that are not related to the request of the person making the claim, from the perspective of the principle of data minimization (Article 5.1.c) of the RGPD), whereby the data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed, access must be limited to this information to the claimant, to

the extent that the terms of his request seem quite explicit and are limited to the decrees of the mayor's office approving the payroll, and the information related to the concepts from which s 'agree your modification..

conclusion

The data protection regulations allow, in this case, access to the trade union representative to a copy of the mayoral decrees approving the payroll of the City Council staff, after anonymization of the data of the affected public employees and limiting their access, if applicable, to any other information that may be contained in said decrees that exceeds the object of their claim, by virtue of the principle of data minimization (art. 5.1.c of I 'RGPD').

However, it would indeed be possible to provide the merely identifying information contained in the mayor's decrees relating to the mayor/mayor, in the terms that have been set forth.

Barcelona, March 23, 2023

Machine translation