

**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 partial denial of the request for information related to places in the stabilization process of the Generalitat.**

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 denial of the request for information related to the places in the process stabilization of the Generalitat.

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

## **Background**

1. On December 16, 2022, a citizen submitted a request for access to public information in which he requested access to the following information:

*" 1.- Number of places that receive this designation of "LETRAT/ADA" and that, for some period of time, have been occupied (and/or are currently occupied) by a person who, in relation to the provision of the place, or places in question, have maintained (and/or maintain, now) a temporary service relationship. In the event that the case arises:*

*1.1 Details of the same, it being sufficient, for these purposes, to identify the DIRECTIVE UNIT, THE NAME OF THE LOCATION, THE LOCATION and the PLACE CODE.*

*1.2 Period or periods during which they have been employed, each of them, through a temporary service relationship.*

*1.3 Details of the person or persons who have occupied each of these positions through a temporary service relationship, related to the period or periods during which they have been occupied, each of them, through a temporary service relationship. In the event that the identification of people is considered protected data, identifying them with their personal registration number (excluding the last three numbers, for example), with their DNI/NIF (excluding the last three numbers, for example) or simply as "person 1", "person 2", "person 3",...*

*position and period, whether they were occupied as a result of an appointment as an interim official or, otherwise, under what form of temporary provision of jobs has been articulated the provision of the posts in question, during the periods in question.*

*2.- Number of places that receive this designation of "LETRAT/ADA" and that, on December 30, 2021 (date of entry into force of Law 20/2021 , of December 28 , on*

*measures urgent for the reduction of temporary employment public ), met the condition of being " places that, meeting the requirements established in article 2.1 (of Law 20/2021, of December 28), would have status employed on a temporary basis without interruption prior to January 1 , 2016".*

*3.- Number of places that receive this designation of "LETRAT/ADA" and that, on December 30, 2021 (date of entry into force of Law 20/2021 , of December 28 , on measures urgent for the reduction of temporary employment público ), met the condition of being " plazas vacancies of a structural nature occupied temporarily by personnel with a relationship of this nature , prior to January 1 , 2016".*

*4.- Number of places that receive this designation of "LETRAT/ADA" and that, on September 8, 2022 (date on which the Qualifying Court of call 300 took the Agreement of the Qualifying Court, of 9/8/2022 , related to the provisional assessment of merits of the call with registration number 300 (stabilization processes through merit competition - civil servants), were occupied by someone who maintained, in relation to the provision of the place, or places in question, a temporary service relationship. In the event that the case arises:*

*4.1 Details of the same, it being sufficient, for these purposes, to identify the MANAGEMENT UNIT, THE NAME OF THE LOCATION, THE LOCATION and the PLACE CODE.*

*4.2 Details of the person or persons who occupied this position(s) through a temporary service relationship on said date (September 8, 2022), as well as the date from which they had been occupying it through this temporary service relationship. In the event that the identification of people is considered protected data, identifying them with their personal registration number (excluding the last three numbers, for example), with their DNI/NIF (excluding the last three numbers, for example) or, simply, as "person 1", "person 2", "person 3",.... in a manner consistent with the numbering given to each of them in the answer to section 1.3.*

*4.3 Details of the specific form of temporary provision of the positions in question, on said date, and, therefore, detailing, for each position or positions, whether on said date it was (are) occupied as a result of an appointment as an interim official or , in other cases, under what form of temporary provision of jobs was articulated the provision of the posts in question on said date.*

*4.4 Total period in which these people have occupied any position(s) of "LETRAT/ADA" through a temporary service relationship, indicating the position or positions occupied (DIRECTIVE UNIT, NAME OF LOCATION, LOCATION and PLACE CODE ) and the period or periods that have occupied them. In the event that the identification of people is considered protected data, identifying them with their personal registration number (excluding the last three numbers, for example), with their DNI/NIF (excluding the last three numbers , for example) or, simply, as "person 1", "person 2", "person 3",.... in a manner consistent with the numbering given to each of them in the answer to section 1.3.*

*4.5 Detail of the specific form of temporary provision of the different jobs that these people have occupied any position(s) of "LETRAT/ADA" through a relationship of temporary services, detailing the position or positions occupied (UNIT DIRECTIVE,*

*LOCATION NAME, LOCATION and PLACE CODE) and the periods of employment and, therefore, in detail, for each position or positions and for each period or periods that have occupied a "LETTER/ADA" position, with a temporary service relationship, if said relationship was articulated through an appointment as an interim official or , in other cases, under what form of temporary provision of jobs was the provision of the positions in issue, in the periods in question.*

*5.- If the people who occupy a "LETRAT/ADA" job, on a temporary basis, have (should) see a decrease in the salary they receive, in some amount, for the worker's contributions to social security for the concept "Unemployment" (or similar).*

*6.- In relation to each of the positions referred to in the previous sections, the period or periods during which the salary of the person(s) who occupied it has been seen decreased, in some amount, as a result of the worker's contributions to social security for the concept of "Unemployment" (or similar).*

*7.- That you indicate to us whether the positions "to be extinguished" published in this stabilization process in the area of the Housing Agency have been occupied prior to 1.01.2016 by staff with a temporary relationship or by personal with a definitive link".*

2. On January 16, 2022, the Secretary of Administration and Civil Service resolves the access request in the following terms:

*"1. Partially approve, in accordance with legal basis number 5, the request for access to public information submitted on December 16, 2022 by the applicant.*

*2. Provide the information requested in points 1 and 2, within a maximum period of 30 days from the date of this resolution to the contact address stated in the request."*

3. On January 15, 2023, the applicant filed a complaint with the GAIP against the Secretary of Administration and Civil Service for the partial denial of access to the requested information, in which he claims:

*"that, once the other relevant procedures have been followed, it considers the claim and, consequently, declares that the subscriber has the right to be provided with all the information he requested on the day, without prejudice to the fact that 'grant hearing procedures to potential interested parties, and, alternatively, that he has the right to all the information he requested on the day, without prejudice to the fact that the details of the people who have occupied and/or occupy the places on the that requested information is provided in a pseudonymized form , identifying them with the personal registration number (excluding the last three numbers, for example) or with their DNI/NIF (excluding the last three numbers, for example) . "*

4. On February 28, 2023, the GAIP forwards the claim to a Department of the Generalitat 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, if applicable, specify the third parties affected by the claimed access.

5. On February 2, 2023, the Department of the Generalitat sent to the GAIP the report of the Secretariat of Administration and Public Function sent to the GAIP in which it makes clear that:

*"(...) The details of the people who have occupied the places requested in the application were provided with the pseudonymisation of their IDs. It consists of a unique code related to each DNI of the occupying person that allows the information to be processed without revealing their identity.*

(...)

*conclusion*

*For all the above, it is considered that the Resolution of the Secretary of Administration and Public Function of January 16, 2023 guarantees access to public information and that the right of the person claiming to access the public information requested under the terms of Law 19/2014, of December 29, on transparency, access to public information and good governance and the regulation that partially develops it."*

6. On February 15, 2023, the GAIP sent a letter to the claimant attaching the report issued by the Department of the Generalitat in relation to his claim and for him to communicate what is the requested information that is the subject of the claim

7. On March 21, 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 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

In relation to the information requested by the person making the claim, collected in the background of this report, it can be said, at the outset, that the data protection regulations do not prevent the person making the claim from accessing information about the number of places *"that receive this designation of "LETTER/DA"* and that for some period of time have been occupied by a person who has maintained a temporary service relationship (in the different situations and periods of time proposed by the person claimant in their request), including the details of the places (management unit, place name, city and place code), the periods of time during which they have been occupied through this temporary service relationship, and the details of the specific form of temporary provision of these positions, as well as the rest of the issues raised in points 5, 6 and 7 of your request for access to information, given that this information does not contain personal data .

On the other hand, the identification with the first and last name and/or the ID number of the people who have occupied each of these places through a temporary service relationship, is information that contains personal data. 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 person"* (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 information claimed 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, as would be the case at hand, access can be given to the information after having carried out a reasoned weighting of the public interest in the disclosure of the information and the right to data

protection of the 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."*

In accordance with this article, access to the requested personal information goes through a prior reasoned weighting that must take into account all the circumstances affecting the case, with the aim of determining whether the interest must prevail public in the disclosure of the information or the right of the affected persons who, in this case, would be the public employees who had occupied the jobs claimed.

A first element to take into consideration is the fact that the regulations governing the public service provide for the publication of information related to the jobs of the public administrations, but without incorporating the information related to the people who occupy them. Thus, in accordance with article 29 of Legislative Decree 1/1997, of October 31, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in the field of public service:

- " The list of jobs is public and must include all civil servants, labor and temporary positions existing in the Administration of the Generalitat. The content of workplace relations must be at least the following:*
- a) The name and essential characteristics of the sites.*
- b) The essential requirements to occupy them.*
- c) The destination supplement and, where applicable, the specific one, if they are positions of official staff.*
- d) The group, the professional category and the applicable legal regime for the employment positions.*
- e) The form of provision of the sites and, for the cases determined by article 50, the access systems.*
- f) The requirements that the officials of other administrations must meet in order to be able to access the jobs through the corresponding call for provision".*

For its part, article 9.d) of the LTC establishes that the Administration must make public " *the list of jobs of official, labor and casual personnel and the workforce and the list of temporary and d "internings not linked to any workplace in the aforementioned list of workplaces"* . In development of this provision, article 20 of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereafter RLTC), establishes:

*"1. For the purposes of letter d) of article 9.1 of Law 19/2014, of December 29, public administrations must publish:*

- a) The list of positions of official, labor and temporary staff, in accordance with the minimum content provided for in the current regulations on public service.*
- b) The list of temporary contracts and internships not linked to any job in the list of jobs.*

2. *The Administration of the Generalitat and its public sector entities, additionally, must publish, on a six-monthly basis and from the corresponding personnel information system, the information relating to:*

a) *The identification with names and surnames of the civil servants who occupy positions of command or singular positions of free designation, of casual staff and of labor personnel with management or command functions, whether they occupy jobs included in the list of positions of work as if they provide services without occupying jobs included in the list of jobs. The identifying data can be anonymized or pseudonymized in the event that any of the legally provided limits apply, after consideration.*

b) *The identification of the place or position occupied, the form of provision and the date of taking possession.*

c) *The list of budgeted places, with an indication of those that are vacant".*

Therefore, although the list of public administration jobs must be published, this does not include information on the identification of the people who occupy them.

On the other hand, however, both the public service regulations and the transparency regulations impose on public administrations active advertising obligations regarding the appointments of people who hold jobs in public administrations, either as civil servants, temporary or work

Thus, the EBEP establishes that personnel selection processes in the field of public administrations are subject to a series of principles, among which it is worth highlighting those of publicity and transparency (article 55.2.a) ib)) . And, with regard to the provision of jobs, it states that they must be provided through procedures based, among others, on the principle of publicity (article 78 EBEP).

In this regard, article 9.e) of the LTC establishes that the administrations must make public the "*calls and the results of the selective processes for the provision and promotion of personnel*". This precept has been developed by article 21 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."*

In accordance with these forecasts, and for the purposes that concern us, the procedures for provisional and definitive provision, and the procedures for the selection of temporary or labor personnel, including temporary exchanges, must be the subject of active advertising and this advertising it must include, at a minimum, both the call data specified in the aforementioned article 21.2 RLTC and the identification of the person or persons finally selected.

Therefore, in the case at hand, the identification data of the people who have been appointed as temporary employees of the body of the Bar of the Generalitat of Catalonia on which the claim falls, is information that will have been the subject of prior publication. This would, therefore, be an element favorable to access to the requested public information.

However, it cannot be ignored that, from the point of view of the impact on the privacy of the people affected, the publication of their data in the context of the corresponding job provision processes does not have the same impact (with respect to which he is aware of the privacy expectations they entail), that the impact that it may have to provide grouped information about each of the positions they have occupied, the characteristics of the position and the corresponding time periods.

Another of the elements that must be taken into consideration when balancing the right of access to public information and the right to the protection of the personal data of the persons affected is the purpose of the access. 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, it is not subject to motivation and does not require the invocation of any rule, know the the motivation for which the claimant wishes to obtain the information may be a relevant element to take into account in the weighting of rights.

In the case at hand, the claimant states in his request for access to the information that he is an interim official of the Generalitat's Bar and, as such, requests access to the claimed information regarding which it indicates that *"This information is very relevant in relation to the purpose behind the request"*, however, it does not specify what this purpose is.

However, the person making the claim expressly states that: *"In this regard, the interest of this party is not so much to know whether reference is being made to Mr. Joan xxx, Mrs. Maribel xxx or Mr. Jordi xxx, but it is of interest to know possible changes in the positions occupied and for this it is necessary to be able to identify the people (details of the person or persons who have occupied each of these positions and period or periods during the s) which one(s) have occupied each of them, in the terms of the application), without prejudice to the fact that this detail does not involve revealing their first and last names, but identifying them with the personal registration number (with excluding the last three numbers, for example) or with your DNI/NIF (excluding the last three numbers, for example)".*

In any case, the personal interest that the claimant may have as an interim member of the Generalitat's legal body in accessing information related to the provision of jobs by this body (without having specified another specific reason), would be included in the same purpose of the law of transparency which according to article 1.2 LTC is *"to establish a system of relationship between the people and the Public Administration and the other obliged subjects, based on the knowledge of public activity, encouraging citizen participation,*

*improving the quality of public information and administrative management and guaranteeing 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.

At the outset, it must be taken into consideration that according to article 5.1.c) RGPD the personal data subject to treatment must be adequate, relevant and limited to those necessary for the purpose for which they are treated.

In the case at hand, given the terms in which the request for information is made and, taking into consideration the principle of minimization (Article 5.1.c) RGPD) it is considered that the control purpose of the action by the public administration in relation to the provision of the workplaces of the body referred to in the consultation could also be achieved without sacrificing the privacy of the people who occupy or have occupied those workplaces.

Certainly, in order to achieve a control that allows to correlate the appointments and terminations of people with respect to the jobs about which the request is made during the required time periods, as requested by the claimant, a valid option and respecting the principle of data minimization would be to deliver the requested information after personal data has been pseudonymised .

*In terms of article 4.5) of the RGPD, pseudonymization consists of " data processing personal in such a way that they can no longer be attributed to an interested party yes to use information additional , as long as stated information additional figure separately and is \_ subject to measures technical and organizational intended to guarantee that the data personal data are not attributed to an identified or identifiable natural person".*

For the purposes of the transparency regulations, pseudonymisation is defined as : *"the processing of personal data in such a way that they cannot be attributed to an interested person without using additional information, provided that this information is recorded separately and is subject to technical and organizational measures intended to ensure that personal data are not attributed to an identified or identifiable natural person"* ( article 70.6 RLTC).

Thus, in the present case, the information about the requested jobs could be given to the claimant by introducing a coding system that preserves the identity of the people concerned (a fixed numerical code for each public worker), only known by the General Secretariat of Civil Service, so that the people to whom the assigned codes correspond are not identifiable by third parties, but at the same time allow the correlation between people and jobs, as requested by the person making the claim . In this sense, using the DNI number or the worker code (while removing some of the figures from these) does not seem to be a good option, since it cannot be guaranteed that the affected persons will not become identifiable without disproportionate efforts .

## **conclusion**

Taking into consideration the terms in which the claim is made, the data protection regulations do not prevent the claimant from accessing the requested information with the prior pseudonymisation of the personal data.

Barcelona, April 3, 2023

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