

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 of a Provincial Council of the request for access to information relating to seniority, courses of training, academic qualifications and level of Catalan of the occupants of different jobs in the County Council

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the refusal by a Provincial Council of the request for access to information relating to the seniority, training courses, academic qualifications and level of Catalan of the occupants of different jobs in the Provincial Council.

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 December 15 and 19, 2022, a person addressed several letters to the Provincial Council in relation to *"the recent and massive publication by the Provincial Council [...] of as many calls as jobs in the same body in cover through stabilization processes"*.

Among other issues, the person states that *"[...] the publication of as many calls as there are jobs to be filled, despite the majority of these belonging to the same body, constitutes a violation of the law in the understanding that pursues the stabilization of the current occupants and not the stabilization of jobs, which does not constitute the objective of Law 20/2021, of December 28, on urgent measures for the reduction of temporary employment in public employment"* and , he continues, considers that this *"contradicts the principles of equality, merit and capacity that must govern the processes of access to the public service and seeks to restrict free competition for the benefit of the current occupants"*.

In relation to this, the person requests access, with respect to the people occupying the jobs affected by the notices in the stabilization processes of the Provincial Council, the following information:

" 1. Indication of the services provided as an interim civil servant in the same scale, subscale and, where appropriate, class or temporary labor staff in the same or similar professional category of the Provincial Council [...].

2. Indication of the services provided as an interim official in other levels, sub-levels and, where appropriate, classes or as temporary labor personnel in other professional categories of the Provincial Council [...].

3. Indication of the services provided as an interim civil servant in the same scale, subscale and, if applicable, class or as temporary labor personnel in the same or similar professional category to that of the position that is called for in other Public Administrations.

4. *Indication of the courses related to the workplace with indication of hours, accredited and recognized academic qualifications, as well as Catalan language level certificates previously declared by the current occupants to the Human Resources Service of the Provincial Council [...], or which can be evidenced by the fact of having appeared in other selective or job provision processes called by the Provincial Council [...] or its autonomous bodies and date of obtaining"* .

2. On January 12, 2023, the Provincial Council decides to accumulate all the procedures for requesting access to public information, understanding that they have a substantial identity and intimate connection, and suspends the resolution deadline to transfer the sole requests to the people who occupy the jobs affected by the access request so that they can make allegations, in accordance with the provisions of article 31 of Law 19/2014, of December 29, of transparency, access to public information and good governance.

3. On February 26, 2023, the applicant submits a claim to the GAIP in terms similar to the access request made to the Provincial Council. In particular, it claims access *"to the seniority, training courses, academic qualifications and levels of Catalan of the occupants of the jobs of the Provincial Council with place codes [...]"*, and cites as the reason for the claim the *"Breach of the principles of equality, merit and capacity that must govern the processes of access to public service and restriction of free competition for the benefit of the current occupants"*.

Attached with the claim is a letter in which, among other issues, it states that it does not intend to access personal data and the fact that the Provincial Government can grant access to the requested information by identifying the people occupying the jobs *"[. . .] with a number or alphanumeric code, without the need to reveal their identity"*.

4. On March 7, 2023, the Provincial Council decides to reject the request for access to public information made considering that *"[...] knowledge by third parties of the requested data may affect their rights and interests in relation to the selective processes in which they participate"* and due to the fact *"[...] that the consent of the data holders is not available for the transfer to third parties and given that this transfer may affect their rights and interests as to participants in selective work processes [...]"*.

The file sent contains the communications of the access request carried out by the Provincial Government to the affected persons and the refusal of all of them to provide the person requesting the information requested for the reasons for which adduces the Provincial Council in the decision to deny access.

5. On March 7, 2023, the GAIP forwards the claim to the Provincial Council and requests a report setting out the factual background and the foundations of its position in relation to the claim, as well as the complete file and, where applicable, that specify the third parties affected by the claimed access.

6. On March 8, 2023, the claimant sent a letter to the GAIP in which he opposed the reasons for which the Provincial Government based the denial of his request and stated, among other issues, that he had not requested information related to applicants registered and admitted to the selective processes, but of the current job holders, and that *"consider that the people holding the indicated jobs may see their expectations frustrated regarding the selection and provision of the jobs work denotes a clear will of the Provincial Council [...]"* to recognize:

a. To the persons occupying a legitimate interest without prior registration and admission to the processes whose object is the selection and provision of the jobs they occupy provisionally.

b. A clear desire to stabilize people, not jobs, which completely contravenes the regulation provided for in Law 20/2021, of December 28 [...].”

The person making the claim considers that the information requested would allow applicants “[...] to assess which selective processes are viable for registration and participation after weighing their merits and those of the current incumbent” , as well as save resources “[...] and not having to resort to external funding sources (credits, loans, among others) in order to deal with as many examination fees as there are so many calls and jobs to provide” . He adds that having this information does not restrict competitive competition and guarantees the principles of equality, merit, capacity and free competition of applicants, as well as what would prevent “[...] only an indeterminate number of people with financial resources enough to be able to access public service”.

7. On March 27, 2023, the Provincial Council issues a report in which, in short, it sets out the same grounds on which it denied the request for access made by the person making the claim.

In particular, the Provincial Council considers that *“the scope of the right of access to public information is not the channel for making this type of claim, and that is why the resolutions of the Presidency of the Provincial Council [...] in this file they have only taken into account whether or not the requested information can be affected by any limitation in the framework of the application of the transparency regulations”*.

In any case, it reiterates the grounds for which *“access to the requested information is limited from two sides:*

- *From the perspective of data protection regulations. According to the file, the affected persons expressly deny their consent to the transfer of their data to the applicant for access to public information.*
- *From the perspective of harm to the rights and interests of the people affected. Their allegations of opposition to the dissemination of seniority, qualifications, training and the level of Catalan have been appreciated given that they coincide with scoring criteria in the selective processes in which they compete with other people, considering - it is known that the dissemination may entail an unjustified advantage for third parties”*.

8. On March 30, 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 at hand, in which access is requested to information relating to the seniority, training courses, academic qualifications and level of Catalan of the staff who, at the time of the request, occupy the jobs affected by the calls to which the claimant refers, 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 his possession as a result of his activity.

It must be noted, however, that the right of access to public information is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case of the limits of articles 23 and 24 of the LTC by what about personal data.

III

The person making the claim is requesting access to information relating to the seniority, training courses, academic qualifications and level of Catalan of the staff who, at the time of the request, hold the jobs on which the Diputació has called for selection processes through a merit competition.

It must be noted, according to what is clear from the file sent, that although the information requested is related to certain calls for selective processes, it is not actually part of any of these processes, but that the access request is limited to knowing certain information that affects the people who occupy, at the time of the access request, the positions affected by the calls. This is what the claimant states in his letter of March 8, 2023, addressed to the GAIP, in which he states that *"at no time has information been requested from applicants registered and admitted to the selective processes that have object is the selection and provision of the jobs indicated, but of the current occupants of the jobs"*.

At the same time, it must also be noted that it is not clear from the file sent that the person making the claim is a candidate for any of the calls to which he refers in his claim, especially because among the reasons for his claim is to be able to have this information, for herself or any other potential aspirant, to *"assess which selective processes are viable for registration and participation after weighing their merits and those of the current person in charge"*.

Once the object of the claim has been located, it must be ruled out at the outset that the requested information includes personal data referred to in article 23 of the LTC, i.e. relative data to ideology, 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 involve public reprimand offender. In the event that there is information of this type, and taking into account that the affected persons have shown themselves against the fact that the requested information is provided to the person making the claim, access should be limited.

Therefore, the analysis must be carried out based on the provisions of article 24 of the LTC, which provides the following:

" 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 the protection of personal data or other constitutionally protected rights must prevail.

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 ."*

To the extent that the information requested exceeds the information referred to in article 24.1 of the LTC, in the sense that it does not refer to merely identifying data, the analysis must be carried out in accordance with what is established in article 24.2 of the LTC, that is to say, a prior reasoned weighting must be made between the public interest in disclosure and the right to data protection of the affected persons, taking into consideration, between

others, the time elapsed, the purpose of the access, the guarantees offered, if there are minors affected or the fact that the intended access could affect the safety of people.

At the outset, it should be borne in mind that article 9.1.e) of the LTC establishes that public administrations must publish the calls for proposals and the results of the selective processes for the provision and promotion of personnel. And, in turn, article 21.2 of the RLTC provides that the data to be published must refer, at least, to the announcement of the call, the bases, the official announcements and the first and last name 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.

At the same time, article 42 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 matters of public function, establishes that in the process of selection, knowledge of the Catalan language, both in oral and written expression, must be proven.

And, article 64, among other issues, provides that calls for tenders, both those for competition and those for free nomination, must be published in the DOGC, and must include, in any case, the following :

- "a) The name, level and location of the site.*
- b) The requirements required to be able to opt for it, in accordance with the workplace relations.*
- c) The merits to be assessed in accordance with the content of the job and the scoring scale, for the case of competition.*
- d) The minimum score established, if applicable, for the award of the announced vacancies, for the case of competition. The resolutions of the calls, both those of merit competition and those of free appointment, are published in the DOGC."*

A priori, on the basis of the provisions of the exposed articles, it does not seem that from the perspective of the data protection regulations there is an impediment to facilitating access to information relating to the fulfillment of the minimum requirements to occupy a certain position of work, such as, that the person occupying has the knowledge of the Catalan language or the minimum training required for the specific job they occupy.

In particular, to the extent that the regulations provide that public administrations must publish, on the one hand, the notices of the selective processes for the provision and promotion of personnel, which at the same time must specify the minimum requirements required to be able to opt for a certain workplace and, on the other hand, they must make public the data of the person finally selected in the terms referred to in article 21.2 of the RLTC, it is clear that the public can deduce that the person finally selected meets, or should meet the minimum requirements required in the call.

Therefore, providing this information, related to the minimum requirements required to occupy a certain job, through the exercise of the right of access to public information, although it may affect the rights and interests of the people affected by the request, since it involves revealing academic and even professional information, is considered not to actually be a greater interference than that already endured by the person who holds a job in the public administration by the via active advertising. All this, unless there are circumstances

that in the specific case determine that the protection of the rights of the affected persons must prevail.

In a generic context, it seems clear that having the information related to verifying that the occupier of a job in a public administration meets the minimum requirements required to occupy that job is public information which can be of special public interest and which, a priori, does not seem to have particular relevance with regard to the right to the protection of personal data. Even, taking into account that the objective of transparency legislation is to establish a system of relations between people and the public administration, and other obliged subjects, based on the knowledge of public activity, the incentive of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of accountability and responsibility in public management (art. 1.2 of the LTC), and in short, the possibility of offering tools to citizens to control the performance of public authorities, having this information can be useful to control and verify that the staff of the County Council meets the minimum necessary requirements associated with the tasks they carry out and, in particular, the jobs they hold.

However, a different level of interference in privacy would entail knowing all the information relating to seniority, training courses, academic qualifications and level of Catalan of the occupants of the jobs for which the Provincial Government has called selection processes, in the measure that does not only refer to information related to the minimum requirements that must be met by the occupants of the jobs, but others that are valued or can be valued as merits.

In accordance with what has been explained, one of the elements that can be considered to carry out the weighting referred to in article 24.2 of the LTC is the purpose of the requested 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, and is not subject to motivation nor does it require the invocation of any rule, know the motivation for which the claimant wishes to obtain the information may be a relevant element to take into account in the weighting.

In the case at hand, it must be borne in mind that the claimant submits the request for access due to the fact that he considers that the Provincial Government has committed fraud by convening independent selective processes to cover jobs that, in general, belong to the same body, and states that this contravenes "*[...] the principles of equality, merit and capacity that must govern the processes of access to the public service and seeks to restrict free competition for the benefit of the current occupants*". This must be related to his letter dated March 7, 2023, addressed to the GAIP, in which he states that the requested information would allow:

"a) [...] for any potential applicant to assess which selective processes are viable for registration and participation after weighing their merits and those of the current incumbent.

b) It allows any prospective applicant to save resources and not have to resort to external sources of financing (credits, loans, among others) in order to deal with as many examination fees as as many calls and places of work to provide

c) It does not restrict (the requested information) the competition of applicants and guarantees that the selection processes and the provision of the jobs offered are adapted to

the principles of equality, equal opportunities, merit, capacity and free competition of aspirants

d) It guarantees equal opportunities and prevents that only an indeterminate number of people with sufficient financial resources can access the public service".

So, it seems clear that the purpose for which you seek to access the requested information is to know, prior to the selection process, or during the period for submitting applications for participation, the merits of the people who occupy the jobs called for by the Provincial Council, and which will be evaluated in the framework of the stabilization processes, and be able to decide on the basis of the analysis of this information whether to present themselves as applicants in these processes.

From the perspective of the person making the claim, and even of any potential applicant, it is clear that having the information to which access is sought makes it possible to assess whether it is viable to submit their application for participation, especially if the system of selection is through the merit competition.

However, it must be noted that the purpose of the transparency regulations is, ultimately, to offer tools to the public to control the actions of the public authorities, and to that end, the pretense does not seem compatible with this purpose of the person making the claim, given that the objective seems to be the control of the public employee who temporarily occupies the job that has been called by the Provincial Council as a possible applicant in the called selective or provision processes.

From the perspective of the affected persons, it must be borne in mind that having the requested information, as a whole, may affect their professional sphere, for example, to the extent that it would mean disclosing the academic curriculum, but it is clear that taking into account the competitive competition that governs any selection process, and at the time when access to said information is requested, it also exposes it to the potential applicants in these selection processes, who would have of privileged information which it is up to the qualifying court to assess, and it is clear that it can end up significantly affecting other personal spheres, such as work (employment) and economic and patrimonial matters.

In addition, according to what appears in the file sent, and although it should not be decisive in the weighting, the affected people have stated that they are against providing the requested information to the person claiming on the basis of consider that this information, in short, exposes them and may affect their rights and interests in relation to the selective processes in which they participate.

For everything that has been exposed, it is considered that the right to the protection of the data of the people affected by the access request must prevail over the public interest of the requested information.

It should be borne in mind that article 70.5 of the RLTC establishes that when, in application of the reasoned weighting of article 24.2 the LTC, access to public information containing personal data is denied, the public administrations, in application of the principles of proportionality and partial access, they must give access to the rest of the information, after anonymization or pseudonymization of this data, when possible. However, it must be noted that the anonymization of the requested information would not be an effective mechanism,

taking into account the general rules on transparency and publicity that must govern the selective processes, an issue that has been analyzed above.

conclusion

Taking into account the circumstances in the particular case, and in accordance with the analysis that has been carried out, from the point of view of the general purpose of transparency, access to the information relating to the seniority, qualification, training and level of Catalan of the people occupying certain jobs, beyond the information relating to the concurrence of the minimum requirements required to occupy said jobs, such as, that the person occupying has knowledge of the Catalan language or the minimum training required for the specific job you hold, in accordance with the list of jobs from the County Council.

Barcelona, May 3, 2023

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