

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 an entity's refusal to request access to the payroll

The Commission for the Guarantee of the Right of Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on the claim submitted in relation to the denial of an entity to the sole request for access to payroll.

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 March 16, 2023, a person submits a request to an entity in which he requests "[...] *the payrolls for the year 2022 of the surveillance officers assigned provisionally as well as category of (the entity) . There is no need for the ID or social security number to come out.*

The applicant requests this information "[...] *to be able to carry out his own tasks as a trade union delegate, which are none other than those of representing workers, defending their labor rights and protecting against risk situations for your health*".

2. On March 23, 2023, the entity provides the requesting person with information regarding the annual gross remuneration corresponding to the year 2022 of the four people who hold the positions of surveillance officer and provides a link where they can consult the current salary tables for the year 2023 of the respective collective agreement.

3. On April 18, 2023, the applicant submits a claim to the GAIP in which he reiterates the terms of his application and states that the information he has received is not the information requested.

4. On April 27, 2023, the GAIP sends the claim to the entity, 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 where applicable, specifying the third parties affected by the claimed access.

5. On May 12, 2023, the entity sends GAIP a report in which it explains, in relation to the claim, that article 11 of Law 19/2014, of December 29, on transparency, access to public information and good governance regulates the information that must be made public in relation to economic and budgetary management, including information relating to remuneration, and that in the case of a claim, the person making the claim does not request information relating to members of the Government, high-ranking officials of the Public Administration or the Institute's management staff, which is why it considers that it is only necessary to report the annual gross remuneration individually, but without the person being able to be identified.

In addition, he adds, that the requested payrolls "*contain union membership data, in the case of those people who have requested that the union fee discount be applied to them through*

the payroll, and data relating to health, for the case of those people who receive the aid for a disabled son/daughter or spouse established by the current collective agreement".

6. On May 22, 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 that concerns us in which it is requested in the payrolls of the people who hold the position of supervisor of the entity, this information must be considered public for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC), as it is documentation in his possession as a result of his.

It should be noted that, by requesting the information, the person making the claim stands as a trade union representative, and invokes his right of access to public information in the exercise of the functions of representing the workers. In relation to this question, although the file sent does not contain any document from which it can be determined whether the claimant indeed holds the status of union representative, it does not seem that it should be

questioned insofar as the 'entity has not contradicted this in the report sent to the GAIP and, moreover, because among the grounds of the refusal resolution reference is made to the specific right of information of the members of the works committee and the trade union delegates of the labor regulations.

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 and labor regulations, and additionally the LTC, the person making the claim would be able to access said information.

III

The person claiming is requesting access to the 2022 payroll of the staff who hold the position of supervisor of the entity, without the number of the national identity document or the security number social. According to the available information, the claimant holds the status of union delegate.

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 To 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."

Therefore, the analysis of the request for access requires taking into account in the case at hand, when deriving from the file sent that the payrolls are requested in respect of labor personnel, the Royal Legislative Decree 2 / 2015, of October 23, by which the revised text of the Workers' Statute Law (hereafter, ET) is approved. 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.

The Workers' Statute attributes to the staff delegates or company committee (art. 62 and 63 ET), as specific bodies representing public workers with employment contracts, certain functions for the exercise of which they are recognized by the right to access certain information, which could include personal data of workers (in essence, the matters covered in article 64 of the ET).

In particular, 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 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, in the regulations analyzed there is no specific regulation that enables access to staff payrolls.

Consequently, it will be necessary to analyze the claimant's claim based on the regime of the right of access to public information provided for in the transparency legislation, given its supplementary applicability (DA 1a, section 2, of the LTC). To this end, it should be borne in mind that the right of access to public information is not absolute, and may be denied or restricted for the reasons expressly established in the laws, as is the case with the limits of articles 23 and 24 of the 'LTC regarding personal data.

IV

At the outset, prior to the analysis of the possibility of access to the claimed payrolls on the basis of the limits of articles 23 and 24 of the LTC, reference must be made to Order ESS/2098/2014, of November 6, which modifies the annex to the Order of December 27, 1994, which approves the individual salary receipt model.

This Order establishes that the individual salary receipt must include, on the one hand, a heading containing the details of the employer (name, address, CIF and the contribution account code (CCC)) and of the worker (name, NIF, social security number, professional group, contribution group).

And, on the other hand, in addition to stating the settlement period, the individual salary receipt must include the salary accruals (base salary, and according to each case, salary supplements, overtime, complementary hours, extraordinary gratuities, salary in kind), if applicable, the non-salary accruals (compensations, Social Security benefits and indemnities, compensations for transfers, suspensions or dismissal or others, such as aid received by the worker on the basis of the regulations or the collective agreement applicable school, if applicable), as well as the deductions that reduce the monthly payroll, such as the amounts relating to the worker's contribution to Social Security contributions and joint collection concepts, the income tax deduction of natural persons, advances, values of

products received in kind or, where applicable, other deductions such as those relating to the quota or union fee.

Taking into consideration the minimum content of the individual salary or payroll receipt, it is necessary to analyze the possibility of access in accordance with the limits established in the LTC relating to the protection of personal data, that is to say, the provisions of the 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. [...]"*

To the extent that the information that the claimant seeks to access exceeds the mere identification of the personnel who hold the position of supervisor, it is considered that the analysis must be carried out based on the forecasts of the '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 be relevant in the case being analyzed (such as the time elapsed, the purpose of the access, the fact that it may affect the safety of people...).

Article 11 of the LTC regulates the information relating to economic and budgetary management that the administration must make public in application of the principle of transparency. In particular, regarding the information related to the remuneration of public employees, section 1.e) provides that the administrations must make public *" the general information on the remuneration, compensations and allowances received by public employees, grouped according to the levels and the bodies "*.

In relation to this provision, article 25.1.a) of Decree 8/2021, of February 9, on transparency and the right of access to public information (hereinafter, RLTC) establishes that the 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 of the agreement, in the case of labor personnel."

On the basis of these articles, access to a copy of the payrolls for the year 2022 corresponding to the staff in charge of surveillance exceeds the information referred to in the transparency regulations that must be made public through advertising active. 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 his request for access, the purpose of the person making the claim is to exercise, in short, the surveillance functions recognized by the labor regulations, which purpose can obviously justify the access to the information requested to verify, for example, that the accruals or deductions reflected in the payroll are in line with the provisions of the labor regulations or the collective agreement.

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.

However, from the point of view of the intrusion into the right to data protection of the affected persons, i.e. the staff in charge of surveillance, 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 particularly relevant, insofar as it can allow you to know data that can directly affect your private life, such as, if the payroll a reduction is reflected as a result of taking paternity leave, or an increase due to the approval of a requested advance.

For this reason, and especially due to the fact that the exact content of the affected payrolls that are sought to be accessed is unknown, taking into account the implications for the private life of the affected persons that the disclosure of this information may have, 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 a copy of the payroll should

prevail over the data protection of the surveillance officers, to the extent that access 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 appear in the payrolls, unless the affected persons have consented expressly and in writing, or, in accordance with what is established in article 15.1 of the LT, in the event that it is data that reveals ideology, trade union affiliation, religion or beliefs, when the person affected party 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 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.

In the case at hand, it must be borne in mind that the entity has reported that among the payrolls there is information relating to union membership based on the provision of article 11.2 of Organic Law 11/1985, of August 2, of Trade Union Freedom, for which "*The employer it will proceed to the discount of the union fee on the salaries and the corresponding transfer at the request of the worker's union affiliated and previous conformance, siempre, of this*".

And, in addition, it also states that data related to health are affected, which cannot be ruled out as being related to the affected personnel themselves or third parties related by family relationship, such as, in the event that it appears on the payroll the aid for dental prosthesis, orthopedic braces, insoles, glasses and lenses or the disability aid provided for in the collective agreement.

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, it would indeed be in accordance with the data protection regulations grant access to certain information contained in the payrolls, to the extent that the staff in charge of surveillance affected are not directly identified or the information granted makes them identifiable.

As this Authority has previously highlighted, if the volume of affected people is large, the treatment that could be applied to the information would consist of a prior pseudonymization of the data, which consists, under the terms of the RGPD in "*the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information appears separately and is subject to technical and organizational measures aimed at ensuring that personal data are not attributed to a identified or identifiable natural person*" (article 4.5 RGPD).

Pseudonymization is also provided for in article 70.6.b) of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC)

However, in the case at hand, it should be borne in mind that according to the information contained in the file sent, the number of people affected is small, to the extent that it has been reported that in the workforce there are only four people who hold the position of supervisor. Therefore, pseudonymization is not considered be effective in guaranteeing the non-identification of the affected persons.

Consequently, although the data protection regulations would not allow access to the copy of the requested payrolls, it is considered that it would be possible to provide the information

contained in the payrolls in an aggregated manner, such as communicating the global amounts that have been remunerated for overtime hours, salary supplements, if applicable, wages in kind, etc., in short, to provide aggregated information for concepts of accrual and deduction from the payroll globally for all affected workers.

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

conclusion

The data protection regulations would not allow the trade union representative to access a copy of the payrolls of the labor personnel affected by the access request. However, it is possible to communicate the information contained in the payrolls in an aggregated manner, so that their non-identification is guaranteed.

Barcelona, June 12, 2023

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