

Ref. AJ: CNS 18/2018

**Opinion in relation to the query made by a City Council on the possibility of communicating the identification data of a municipal employee to a public body that is instructing actions prior to the start of a sanctioning procedure**

A letter from a City Council is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion to assess the possibility of communicating the identification data of a municipal employee to a public body that is instructing actions prior to the start of a sanctioning procedure.

Specifically, it states that the General Directorate of Equality has opened a period of information and actions prior to the initiation of a disciplinary file for alleged violation of Law 11/2014, of October 10, to guarantee the rights of lesbians, gays, bisexuals, transgender and intersex and to eradicate homophobia, biphobia and transphobia (hereinafter Law 11/2014). According to the above, a City Council worker who was carrying out his duties as a civic agent could be involved in the events, so the General Directorate is asking the City Council to identification and contact details of the civic agent.

The consultation presented by the City Council asks if they can provide the General Directorate of Equality with the full name, ID, postal address and telephone number of this person, who currently no longer works at the City Council.

Having analyzed the query, which is not accompanied by any other documentation, and in accordance with the report of the Legal Advice I issue the following opinion:

I

(...)

II

First of all, it is necessary to establish the framework in which the request for information is made to the City Council.

Law 11/2014 develops and guarantees the rights of lesbians, gays, bisexuals, transgenders and intersexuals (LGBTI) to avoid situations of discrimination and violence and to ensure that sexual and emotional diversity can be experienced in full freedom in Catalonia. To guarantee the effectiveness of these rights, article 34 of Law 11/2014, establishes a series of behaviors contrary to what the law provides for, which qualify as infractions.

In accordance with article 3.11.7 of Decree 2/2016, of 13 January, on the creation, designation and determination of the scope of competence of the departments of the Administration of the Generalitat of Catalonia, corresponds to the Department of Labor, Social Affairs and Families the competition on gay, lesbian, transgender and intersex policy.

In accordance with article 157.1 of Decree 289/2016, of August 30, restructuring the Department of Work, Social Affairs and Families, the General Directorate of Equality has the following functions:

- a) Promote the effective equality of citizenship rights in all public policies.
- b) Promote and evaluate effective equality policies in terms of access to work and occupational training and non-regulated training, and policies aimed at young people, the elderly and those of an intergenerational nature.
- c) Promote and evaluate the participation of immigrants in activities aimed at their effective integration.
- d) Promote the participation of people from groups at risk of exclusion.
- e) Promote policies for the real equality of people with disabilities.
- f) Promote universal accessibility with the aim of guaranteeing equal opportunities and non-discrimination on the grounds of disability or the existence of physical or attitudinal barriers, and ensure the application of current Catalan regulations in this area.
- g) Promote and promote policies that allow full equality for citizens in terms of digital literacy.
- h) Plan and implement policies for equal treatment and non-discrimination of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, as well as against discrimination based on sexual orientation, gender identity or expression gender of people.
- i) Act as the body responsible for the application of the transversality of the gender perspective in the planning, management and evaluation of departmental policies, through the exercise of the functions established in article 8.2 of the Law 17/2015, of July 21, on the effective equality of women and men.
- j) Collaborate with other departments, institutions or entities in programs, projects or initiatives aimed at equality.
- k) Plan and promote support plans and actions for companies and public and private entities intended to incorporate equal treatment and opportunities in their organizations.

l) Ensure that life time is compatible with equal opportunities for associative, community, labor and, in general, social participation.

m) Represent the Department of Work, Social Affairs and Families in the interdepartmental and interinstitutional commissions in relation to the competences that belong to it.

n) Establish and maintain relations with the European Union and international commissions for equal opportunities and non-discrimination, the exchange of experiences and the development of gender transversality (mainstreaming).

o) **Any other function of a similar nature that they entrust to him."**

Therefore, in the event that it has been entrusted with the application of the sanctioning regime of Law 11/2014, if there is a complaint relating to the infringement of Law 11/2014, the General Directorate of Equality or, where appropriate, the body of the Department to which it has been entrusted, must carry out the appropriate investigations for the purposes of being able to process, if necessary, the corresponding sanctioning procedure. From the information provided it follows that it is within this framework that the query is being considered.

### III

In the case at hand, the request for information from the City Council will involve the communication of personal data of a natural person who had worked for the City Council. It will be necessary to comply with the data communication regime that derives from article 11 of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD).

In accordance with the aforementioned article 11, data related to the legitimate functions of the transferor and the transferee can only be communicated, if the consent of the affected persons is obtained or if any of the exceptions in the second section of the same apply article

The second section of the article foresees different exceptions, among which we must highlight, for the purposes that interest us, the one provided for in letter a), that is, that the transfer is authorized by a law. It is therefore necessary to first analyze the provisions of Law 11/2014.

Law 11/2014, despite regulating the sanctioning regime, does not regulate the activity of inspection or investigation, nor does it foresee the duty to collaborate with the bodies responsible for the inspection or investigation of the complaints made.

However, it should be borne in mind that the duty of collaboration is generally provided for in article 18.1 of Law 39/2015, of October 1, on common administrative procedure of public administrations (LPAC):

"1. The persons will collaborate with the Administration in the terms provided for in the Law that is applicable in each case, and in the absence of express provision, they will provide the Administration with the reports, inspections and other acts of investigation that they require

for the exercise of their competences, except that the disclosure of the information requested by the Administration would threaten the honor, personal or family privacy or involve the communication of confidential data of third parties of those who have knowledge for the provision of professional services of diagnosis, advice or defense, without prejudice to the provisions of the legislation on money laundering and financing of terrorist activities.”

Unlike the previous article 39 of Law 30/1992, of November 26, on the legal regime of public administrations and the common administrative procedure, which provided that "citizens are obliged to provide the Administration with reports, inspections and other acts of investigation **only in the cases provided for by the Law**", the new article 18 does not require that there be a specific law that includes the duty to provide information, but is derived directly from the LPAC itself.

This general obligation of collaboration provided for in article 18 LPAC is conditional on three requirements:

- a) That the information is required for the acts of inspection and investigation.
- b) That it does not affect honor, personal or family privacy.
- c) That it does not involve the disclosure of confidential data of third parties of which they have knowledge due to the provision of professional services of diagnosis, advice or defense (unless it is a matter of money laundering or financing of activities terrorists).

It is easy to see that in the case at hand this third limitation does not apply to the duty to collaborate. For this reason, it is necessary to analyze whether any of the first two apply.

Based on the information available, what we are talking about is being able to identify the person who participated - it is not known whether as an author, participant, witness, or in another capacity - in the xenophobic episode while he was exercising his functions as civic people, in order to be able to contact them, when necessary during the phase of actions prior to the start of a sanctioning procedure (art. 55 LPAC).

The required information consists of the person's first and last name, ID (we understand that it refers to the ID number), postal address and telephone number. From the point of view of the need to carry out the investigative actions specific to the preliminary actions phase, it may be relevant to know the identity of the person, as well as the telephone number and postal address to put in contact. However, the same cannot be said about the DNI, even if the information required is limited to the number. of ID, because it is not necessary to be able to get in touch with it and quote it or ask it for the information that is appropriate.

As for the rest of the data, it must be ruled out that it is data that affects your right to honor, personal or family privacy. It could be that depending on what your participation in the events was, some information could end up appearing that could harm your right to honor, but this condition would not derive in any case from the disclosure of the data requested to the City Council.

It must also be ruled out that it is intimate information. The requested data would not have this character and the context to which the reported facts refer (exercising the functions of a civic agent in a public park in the city) does not seem to be part of the privacy sphere of the person from whom information is requested.

Therefore, it seems that article 18 of the LPAC implies a duty of collaboration that would justify the communication of the data relating to the name and surname, telephone and postal address.

On the other hand, it should also be taken into account that article 24.1 of Law 19/2014, of December 29, on transparency, access to public information and good governance, establishes that in principle access must be given to data related to the organization or operation of the Administration, such as the identification of a municipal worker who intervened in certain events while acting as a civic agent, unless other rights or constitutionally protected goods must prevail. In this case, this legal qualification could pose more difficulties to be able to access the postal address (private) or the telephone (private), but as has been said, the duty to collaborate with the administration provided for in the LPAC would provide coverage legal basis for the communication of this data.

These same considerations can be made based on the provisions of Regulation (EU) 2016/679, in full application from May 25, 2018, given that article 6.1.c) enables the communication of data when its purpose the fulfillment of an obligation payable to the data controller. In this case, as we have seen, the obligation would derive from article 18 of the LPAC.

In accordance with the considerations made in these legal foundations in relation to the query raised in relation to the possibility of communicating the identification data of a municipal worker to a public body that is instructing actions prior to the start of a sanctioning procedure, the following are done,

## **Conclusions**

The data protection regulations do not prevent the communication of data relating to the first and last name, postal address and telephone number of a municipal employee who had some kind of participation in the facts investigated, at the request of the competent body for the instruction of actions prior to a sanctioning procedure.

Barcelona, March 27, 2018