

Ref.: CNS 22/2018

Opinion in relation to the query made by the president of a County Council on the transfer of data in the matter of basic social services to the town councils of the region

A letter from the president of a County Council is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion to assess whether the transfer of data regarding basic social services to the county councils may constitute a breach of data protection legislation.

Specifically, it states that:

- The County Council manages the social services of all the municipalities in the county since all the municipalities have less than 20,000 inhabitants and have signed delegation agreements with all the town councils.
- The council provides, among others, the teleassistance service, for which users pay a financial consideration that several councils want to subsidize.
- For this purpose, they request the Regional Council to provide them with the contact details of the users of their municipality, name, surname and address in order to send them the documentation for the dissemination of the aid that they want to grant.
- Given that the users have not signed any express transfer of data for this purpose, they consider whether this data can be transferred to the councils and whether this transfer would be justified in the competence of the councils in the matter of basic social services despite the delegation made to the Council county
- It is intended to collect the consent of the users when they process the adjustments before the Town Councils so that they can request from the County Council the amounts paid for the teleassistance services during 2017 and, if the county council has fully or partially subsidized the cost of the service, with an indication of the amount, of that user.
- Finally, consider whether this data authorization is sufficient or whether an agreement would be required town hall-county council.

Having analyzed the consultation, and in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

II

This Authority has had the opportunity to analyze the communication of data in the field of social services, in opinions CNS 8/2010 and CNS 13/2014, among others, which can be consulted on the Authority's website www.apdcat.cat.

In the case at hand, the County Council explains that it manages the social services of all the municipalities in the county, which have less than twenty thousand inhabitants, and formulates a first query in relation to the contact details of the users of the teleassistance service, name, surname and address, regarding which it considers whether they can be given to the county councils without the express consent of the registered users, so that the councils can send them information about the aid they want to grant.

Likewise, it proposes that in the processing of these grants by the councils, it is intended to collect the authorization of the interested parties so that the councils obtain from the county council the data on the amounts paid for the teleassistance service and whether it has been subsidized in the user person, and ask if this authorization is sufficient or if an agreement between both administrations is required.

Focused on the consultation in these terms, it must be taken into account that all information about specific natural persons, in this case the identification data of the users of the teleassistance service, is protected by Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter LOPD), as well as by Royal Decree 1720/2017, of December 21, which approves the Regulations for the deployment of the LOPD (hereinafter RLOPD). In addition, it should be borne in mind that from next May 25, 2018, Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection Regulation will apply (hereinafter, RGPD).

The LOPD defines personal data as any information relating to identified or identifiable natural persons and, as processing of personal data, all the operations and technical procedures, whether automated or not, that allow collecting, recording, preserving, processing, modify, block and cancel, as well as transfers of data resulting from communications, queries, interconnections or transfers (art. 3.c) of the LOPD). In the same sense, the RGPD defines treatment as "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, sharing or interconnection, limitation, deletion or destruction".

It is worth saying that the data on which the query is formulated, in principle, would not be considered particularly protected data or, in the terminology of the RGPD "special categories of data", for which the regulation establishes, in general, the prohibition of treatment except when any of the cases provided for in article 9.2 occur, including the ~~explicit consent of the interested party~~. that in certain cases the data relating to the users of the teleassistance service could reveal particularly protected information of the users, for health reasons or, at the very least, relating to a situation of social vulnerability.

In accordance with data protection regulations, the processing of personal data must have a person in charge, who assumes a series of responsibilities or obligations regarding the processing of personal data that is carried out. According to the LOPD, the natural or legal person, public or private, or administrative body, which decides on the purpose, content and use of the treatment (article 3.d) of the LOPD, is responsible for the treatment. In similar terms, the RGPD in article 4.7 defines the data controller as "the natural or legal person, public authority, service or any other body that, alone or together with others, determines the purposes and means of the treatment. ...".

Regarding the treatment of the data subject to the consultation, based on the premise that the county council is responsible for the treatment, a case of communication of data by the county council, that is to say, by the person in charge, to a third party, or in the terminology of the RGPD a data processing consisting of a communication to a third party.

Article 11 of the LOPD establishes that personal data can only be communicated to a third party for the fulfillment of purposes directly related to the legitimate functions of the assignor and the assignee with the prior consent of the interested party. This consent is not required in certain taxed cases, including when the assignment is authorized by law.

Regarding the communication of data between administrations, as would be the case of the consultation, article 21 of the LOPD, establishes that:

- "1. The personal data collected or prepared by public administrations for the exercise of their powers must not be communicated to other public administrations for the exercise of different powers or powers that deal with different matters, except when the communication has been foreseen by the provisions for the creation of the file or by a provision of higher rank that regulates its use, or when the purpose of the communication is the subsequent processing of the data for historical, statistical or scientific purposes.
2. In any case, personal data that one public administration obtains or prepares for another can be the subject of communication.
3. Notwithstanding the provisions of article 11.2.b), the communication of data collected from sources accessible to the public cannot be carried out in files of private ownership, unless it is with the consent of the interested party or when a law provides another thing.
4. In the cases provided for in sections 1 and 2 of this article, the consent of the affected person referred to in article 11 of this Law is not necessary."

Therefore, personal data, in accordance with the LOPD, can be communicated between public administrations when they are necessary for the exercise of the same competence by the transferee administration or for the exercise of competences different ones that cover the same subject. In this case, however, and by virtue of the data quality principle established in article 4.1 of the LOPD, the data must be limited to those that are strictly necessary for the exercise of the jurisdiction assignee administration.

For its part, the RGPD deletes the concept of data transfer which is subsumed in the definition of treatment, and is based on the criterion that all data treatment must be lawful,

loyal and transparent in relation to the interested party (art. 5 RGPD). In order for the processing to be lawful, in accordance with article 6, the data must be processed with the consent of the interested party or "on some other legitimate basis established in accordance with law, either in this Regulation or in by virtue of another law of the Union or of the Member States to which this Regulation refers, including the need to fulfill the legal obligation applicable to the person responsible for the treatment or the need to execute a contract to which the interested party is a party or for the purpose to take measures at the request of the interested party prior to the conclusion of a contract" (Consideration 40 RGPD).

Specifically, article 6.1.e), establishes that the treatment is lawful if:

"..The treatment is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment."

The referral to the "legitimate basis established in accordance with the internal law of the member states" it requires, in the case of the Spanish State, in accordance with article 53 of the Spanish Constitution, that the development rule, as it is a fundamental right, has the status of law.

Although it is still in parliamentary processing, the Draft Organic Law on the Protection of Personal Data, approved by the Council of Ministers on November 10, 2017, and published in the BOCG, Congreso de los Diputados Series A Núm. 13-1 of November 24, 2017 develops article 6 of the RGPD when it establishes:

"Article 8. Data treatment protected by law.

1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1 c) of Regulation (EU) 2016/679, when this is provided for by a rule of European Union law or a law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation. The law may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679.
2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016 /679, **when it derives from a competence attributed by law."**

Therefore, in accordance with the RGPD, the processing of data consisting of the communication to a third party will be considered lawful when it is based on a legitimate basis established in accordance with law, whether it is the RGPD itself or other law of the Union or of the states members

It is therefore appropriate to analyze the regulatory framework applicable to the matter to determine whether there is legal authorization for the processing of data proposed by the county council.

It must be taken into account that, in accordance with article 66 of Legislative Decree 2/2003, of April 28, which approves the Consolidated Text of the Municipal and Local Government Law of Catalonia, the municipality has powers own, among others, in the provision of social services and social promotion and reintegration.

For its part, article 15.1 Law 12/2007, of October 11, on social services, hereinafter LSS, establishes that the public system of social services is organized in the form of a network to work in coordination, in collaboration and in dialogue between all the actors involved in the care process for people and is structured into basic social services and specialized social services.

Basic social services are organized territorially and include basic equipment, home help and teleassistance services and non-residential socio-educational intervention services for children and adolescents.

Article 17.i of the LSS provides that basic social services correspond to the provision of home help services, teleassistance and support to the family or cohabitation unit, without prejudice to the functions of home health services.

Article 20 of the LSS expresses that the actions, technical interventions, programs, projects, means and economic and technological aid offered to people and intended to fulfill are benefits of the public social services system the purposes established in article 3 of the aforementioned law. The benefits of the public system of social services can be service, economic or technological.

In terms of competences, article 31.1 provides that it is up to the municipalities, among others, to fulfill the functions of basic social services, and paragraph 2 of this article establishes that the counties replace the municipalities of less than twenty thousand inhabitants in the ownership of the competences of basic social services that these municipalities are not in a position to assume directly or jointly.

Indeed, article 34 of the aforementioned law provides that the basic areas of social services are the primary unit of social care for the purposes of the provision of basic social services, they are organized over a minimum population of twenty thousand inhabitants, taking as based on the municipality, and must group municipalities with less than twenty thousand inhabitants. In this case, the management corresponds to the county or the associative body created especially for this purpose.

In addition, the second transitional Provision of the LSS provides that until the territorial organization of Catalonia is approved, local administrations and supra-municipal administrations can assume the functions that the law attributes to supra-municipal local bodies. In any case, the powers assumed by town councils and county councils at the time the law came into force must be respected.

Therefore, as stated in the consultation, the County Council replaces the municipalities of the county in the ownership of the competences of basic social services, among them, the service

of teleassistance and would be responsible for the processing of personal data related to these services.

We cannot forget, however, the regulation made by the LSS regarding the financing of basic social services, so article 62 foresees that the town councils and the Administration of the Generalitat share the financing of basic social services, including the social service teams, the programs and projects, the home help service and the other services that are determined as basic. Likewise, article 60.5 provides that municipalities and other local bodies must include in their budgets the allocations necessary to finance the social services under their jurisdiction.

The Royal Legislative Decree 2/2004, of March 5, which approves the revised Text of the Law regulating local finances, specifies in chapter IV of Title VI, relating to the budget and public expenditure, that local entities exercise the internal control functions with respect to its economic management, of the autonomous bodies and of the commercial companies that depend on them, in its triple meaning of supervisory function, financial control function and effectiveness control function (article 213). In the following articles of this same rule, the scope of application and the modalities of exercise of the three functions (auditor, financial control and effectiveness control) are specified in which the public control function is broken down and internal auditing.

Specifically, with regard to the auditor's function, its purpose is to audit all acts of local entities and their autonomous bodies that give rise to the recognition and settlement of rights and obligations or expenses of economic content, the income and payments that derived from them, and the collection, investment and application, in general, of the administered public flows, with the aim that the management conforms to the provisions applicable in each case (article 214.1 of RDL 2/2004). The exercise of this function includes, among others, the formal intervention of the arrangement of the payment and the material intervention of the payment (article 214.2 of RDL 2/2004).

With regard to the financial control function, its purpose is to verify the operation in the economic and financial aspect of the services of local entities, their autonomous bodies and the commercial companies that depend on them (article 220 of RDL 2/2004). In relation to the control of effectiveness, it aims to periodically check the degree of fulfillment of the objectives, as well as to analyze the cost of operation and the performance of the respective services or investments (article 221 of the same RDL 2/2004).

In short, the various functions of economic control and inspection that the regulations grant to the councils (which are exercised by the corresponding supervisory bodies) could lead, in the case at hand, to the councils, which participate in the co-financing of basic social services, they must have sufficient information to be able to monitor the appropriate use of the budget allocations set aside for the purposes of meeting the payment of those services that, in terms of social services, correspond to them.

Therefore, the articulation of competences in the matter of social services by the LSS in which there is a shared exercise of competence between different Catalan public administrations, and in which the municipality is attributed an obligation to finance basic social services, together with with the legitimate exercise of the function of economic control and inspection, constitute a legal qualification, in the terms of article 21 of the LOPD as well as of article 6.1.e) of the RGPD, so that the the county council can communicate to the town councils of the county as much

the identification data of users of the teleassistance service as financial data referred to in the second part of the query.

The communication of the aforementioned data being legitimate for the purpose of control, once the beneficiaries of the service have been identified, the city council could use this identifying data to communicate to the users of the social services registered in the municipality, the aid it intends to offer, to based on the address data contained in the municipal register of inhabitants.

As this Authority has ruled on previous occasions, among others, in opinions CNS 9/2013, CNS 44/2014, CNS 45/2014 or CNS 67/2015, this access to the register data would be legitimate to the extent that the purpose for which it is accessed corresponds to the development of the functions included in the exercise of municipal powers and that the address data is relevant to achieve this purpose.

To the extent that the town councils on which the consultation is proposed have less than twenty thousand inhabitants and in accordance with the social services regulations only have competence in the financing of basic social services, the competence to grant the aid that is the subject of the consultation would derive from the general capacity that corresponds to the municipalities to develop complementary activities to those of other administrations in different sectors of activity as well as to satisfy the interests of the local community (articles 25 and 26 LRBRL, and articles 66 and 71 TRLMRLC) , according to which it would be legitimate to access the data of the address to communicate the existence of the aid.

Despite the fact that there is legal authorization for the transfer of data, from the entry into force of the RGPD, it is necessary to warn of the need to take into account, in terms similar to what is established in article 4 of the LOPD, the principle of minimization contained in article 5.1.c) of the RGPD, which establishes that personal data must be:

"... Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (minimization of data)."

On the other hand, this legal authorization does not exempt from the obligation to inform the data holders of the inter-administrative transfer carried out, provided for in article 5.4 of the LOPD and article 14 of the RGPD which establishes:

"Article 14. Information to be provided when personal data have not been obtained from the interested party

1. When the personal data have not been obtained from the interested party, the data controller must provide the following information: a) The identity and contact details of the data controller and, where appropriate, of their representative. b) The contact details of the data protection representative, if any. c) The purposes and treatments for which the personal data are intended and the legal basis of the treatment. d) The categories of personal data that are processed. e) The recipients or the categories of recipients of the personal data, if applicable. f) If applicable, the intention of the person in charge to transfer personal data to a third country or an international organization, and whether or not there is a Commission adequacy decision, or, in the case of the transfers mentioned in articles 46 or 47 or in article 49, section 1, paragraph

second, it must inform you of the adequate or appropriate safeguards and the means of obtaining a copy thereof, or the place where they are available.

2. In addition to the information mentioned in section 1, the data controller must provide the interested party with the following information, necessary to guarantee fair and transparent data processing with respect to the interested party: a) The term during which personal data will be kept or, when this is not possible, the criteria used to determine this term. b) When the treatment is based on article 6, section 1, letter f), the legitimate interests of the person responsible for the treatment or a third party."

It must be taken into consideration that the exception of article 14.5.c) of the RGPD is not applicable to this communication obligation, which in terms similar to article 5.5 of the LOPD, exempts from the obligation to inform the interested party, among others when:

"The obtaining or communication is expressly established by the law of the Union or of the member states to which the controller is subject and which establishes appropriate measures to protect the legitimate interests of the interested party."

Therefore, the obligation to inform the interested parties on all the issues provided for in article 14 of the RGPD prevails, given that the personal data that the county council communicates to the county councils, without the consent of their holders, do not come from a transfer **expressly** provided for in the law, although it can be considered a lawful treatment, protected by the law.

IV

In accordance with the considerations made in these legal foundations in relation to the consultation raised by the president of a County Council in relation to the transfer of data in the matter of basic social services to the town councils of the county may involve a violation of the legislation of protection of personal data, the following are done,

Conclusions

The communication by the county council of the identification data of the users of the teleassistance service, as well as the amounts paid for the teleassistance service during the year 2017, the cost of the service and, the existence of a subsidy or not by the council county, in the county councils, can be considered a legitimate treatment in accordance with article 21 of the LOPD, as well as in accordance with article 6.1.e) of the RGPD.

As it is legitimate to communicate to the town councils, without the consent of the interested party, the aforementioned financial data, it is not considered necessary to sign an agreement for this sole purpose.

The councils can access the address data of the Municipal Register of the users of the service in order to inform about the aid to the service, given that it is personal information necessary for the exercise of the powers it has entrusted

Barcelona, April 26, 2018

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