

**Opinion in relation to the query made by a Foundation regarding whether it is within the competence framework of the Catalan Data Protection Authority.**

A letter from a Foundation is presented to the Catalan Data Protection Authority, in which two queries are formulated.

First of all, the Foundation inquires about whether it is within the competence framework of the Catalan Data Protection Authority.

Secondly, the Foundation asks where they must communicate the designation of the data protection delegate and requests any other information related to data protection in order to comply with the data protection law.

The consultation is accompanied by documentation relating to the issue raised, specifically, a copy of the deed of formalization of agreements to modify, adapt and recast the Statutes of the Foundation and registration in the Register of Foundations of the Generalitat, copy of the Statutes of the Foundation, copy of the formalization deed of expiry agreements, resignations and appointments of positions.

Having analyzed the request and the documentation that accompanies it, and having seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The Foundation formulates a first query on whether it is within the competence framework of the Catalan Data Protection Authority.

According to Article 156 of the EAC, the Generalitat has executive competence in matters of personal data protection which, respecting the guarantees of fundamental rights in this matter, includes in any case:

- "a) The registration and control of the files or the processing of personal data created or managed by the public institutions of Catalonia, the Administration of the Generalitat, the local administrations of Catalonia, the autonomous entities and other legal entities public or private that depend on regional or local administrations or that provide services or carry out activities on their own account through any form of direct or indirect management, and the universities that make up the Catalan university system. b) The registration and control of files or the processing of private personal data created or managed by natural or legal persons for the exercise of public functions in relation to matters

which are the responsibility of the Generalitat or the local bodies of Catalonia, if the treatment is carried out in Catalonia. c) The registration and control of files and data treatments that are created or managed by corporations under public law that exercise their functions exclusively within the territorial scope of Catalonia."

Article 3 of Law 32/2010, of October 1, of the Catalan Authority for the Protection of Data, states that the Authority's scope of action includes the treatments carried out by:

"a) Public institutions. b) The Administration of the Generalitat. c) Local bodies. d) Autonomous entities, consortia and other public law entities linked to the Administration of the Generalitat or to local bodies, or that depend on them. e) Entities governed by private law that meet at least one of the following three requirements in relation to the Generalitat, the local bodies or the bodies that depend on them: First. That their capital belongs mostly to the said public bodies.  
second That their budget income comes mostly from the said public bodies.

third That in their management bodies the members appointed by said public bodies are a majority. f) Other private law entities that provide public services through any form of direct or indirect management, if it is files and treatments linked to the provision of these services. g) The public and private universities that make up the Catalan university system, and the bodies that depend on them. h) Natural or legal persons who fulfill public functions in relation to matters that are the responsibility of the Generalitat or local bodies, if it is files or treatments intended for the exercise of these functions and the treatment is carried out in Catalonia i) Corporations under public law that fulfill their functions exclusively in the territorial area of Catalonia for the purposes of what is established in this law."

In accordance with the provisions of these articles, it is necessary to see if the processing of personal data carried out by the Foundation can be considered included within the scope of action of the Catalan Data Protection Authority.

### III

Law 5/2001, of May 2, on foundations provides that private foundations are non-profit entities, constituted by the expression of will of the natural or legal persons who are the founders, through the attachment of goods or rights for purposes of general interest (article 1.2).

According to the Statutes of the Foundation, which are attached to the consultation, this is constituted as a non-profit entity whose assets, income and resources obtained are permanently assigned to the realization of purposes of general interest provided for in its Statutes (article 1).

Article 3 of the Foundation's statutes states that its scope of action is limited to Catalonia.

The Foundation has its own legal personality and enjoys full legal and operational capacity, and is registered in the Registry of Foundations of the Generalitat de Catalunya (article 4).

The purposes of the Foundation are described in article 5 of the Statutes, in the following terms:

- "a) Ensure and guarantee the well-being and respect for the rights of people with mental impairment and/or elderly people who are legally incapacitated.
- b) Exercise, in accordance with the legislation in force at any given time, the guardianship institution to which the persons who have been - for these purposes legally assigned and which the Foundation has expressly accepted - are subject to.
- c) Promote, when appropriate, the incapacitation, guardianship and/or other guardianship figures recognized by legislation, of people with mental disabilities and/or elderly people who cannot fend for themselves and/or they cannot administer their assets, as long as and when: (i) they individually meet the requirements stipulated by these statutes to enjoy the status of beneficiary; and (ii) the approval of the Prosecutor's Office and/or the families is obtained.
- d) Guarantee the proper functioning of the exercise of the tutelage function so that it really responds to the individual interests of each person under tutelage.
- e) Participate, when appropriate, in the complementary guardianship bodies, while actively collaborating with the competent entities and authorities.
- f) To properly administer (i) the assets of the persons under guardianship and/or those subject to any other guardianship institution, which have been assigned to him; and (ii) dowries or legacies that have been placed at their disposal."

According to article 6 of the Statutes, "for the achievement of the founding purposes, the Foundation carries out the activities that the Board of Trustees deems necessary, directly and/or in collaboration with other entities, institutions or people (...) between which are listed, without exhaustiveness, as follows":

- "a) Information, guidance, advice and assistance to parents, children, relatives, guardians, guardians and de facto guardians and various institutions, on legal incapacity and guardianship institutions for the mentally disabled.
- b) Collaboration and participation with political, administrative and/or judicial bodies in order to achieve, at all times, legislative reforms appropriate to the real needs of people with mental disabilities, and their judicial application.
- c) Assistance in the management and processing, if applicable, of legal incapacity files and of guardianship institutions.
- d) Exercise of legally , of the guardianship, or of the functions that have been assigned to him conferred guardianship. Control and supervision of their respective operation.

e) Collaboration with other guardian entities, with coordinators and/or with federations that have the same or similar objectives, as well as with the departments of the Public Administration that have care and/or intervention in terms related to the protection of people with mental disabilities."

Article 166.1 of the EAC attributes to the Generalitat the exclusive competence in matters of social services which includes in any case: b) The regulation and organization of public and private entities, services and establishments that provide social services in Catalonia.

Within the framework of the competences of the Generalitat in the matter of social services, Law 12/2007, of 11 October, on social services, in title VI regulates the role of the private social initiative in social services and orders the 'performance of public administrations in relation to private entities.

In accordance with article 69 of Law 12/2007, of 11 October, on social services, it provides, among others, that private initiative in the field of social services can be exercised by initiative entities social and that these entities are foundations, associations, cooperatives, voluntary organizations and other non-profit entities and institutions that carry out social service activities.

Thus, article 70 of Law 12/2007 provides that private initiative entities can be part of the Public Care Social Services Network, for which they must previously be accredited by the competent Administration in terms of social services and, in order to obtain this accreditation, it must be administratively authorized and registered in the Register of entities, services and social facilities. In section 2 of this article it is provided that this accreditation may entail the right to provide services with public funding and that this provision of services must be defined by means of a collaboration agreement between the entity accredited and the competent administration in the field of social services.

The Foundation is registered with no. 227 in the Register of entities, services and social establishments as a private entity of social initiative for the provision of guardianship services of the private Catalan Foundation for the guardianship of the mentally disabled and for elderly people with dementia. Therefore, it is an accredited entity in accordance with the provisions of article 70 of Law 12/2007.

Law 4/2017, of March 28, on the budgets of the Generalitat de Catalunya for the year 2017, extended for the year 2018, includes an additional provision (DA31) that establishes the extension of the approved Social Services Portfolio by Decree 142/2010. In point 1.2.3.6 of the Social Services Portfolio, the "Guardianship service for the elderly" and in point 1.2.6.2.6 "Guardianship service for people with intellectual disabilities" appear as a guaranteed benefit.

In addition, Order TSF/39/2017, of March 17, which approves the bases that must govern the ordinary call for grants for projects and activities for entities in the field of social policies of the Department of Labor, Social Affairs and Families, show the specific bases of the programs of these entities and are, as far as the case at hand is concerned, the subsidies to entities for social services that carry out service maintenance programs and social service establishments defined in the current Portfolio of social services relating to the guardianship service for elderly people with dependency or social risk and for people with intellectual disabilities (Annex 3, letter J, sections J.1 and J.7), these activities which carried out by the Foundation.

Finally, point out that article 76.1 of the Social Services Law provides that: "The Administration of the Generalitat and the competent local bodies in the field of social services may grant subsidies and other aid to social initiative entities for to assist in the performance of their social service activities".

Thus, consulted Resolution TSF/876/2018, of May 2, by which publicity is given to the subsidies granted by the Department of Work, Social Affairs and Families in the field of social affairs and families during the year 2017 (published in DOGC no. 7613 of May 7, 2018) and the income statements published on the Foundation's website, corresponding to the years 2015 and 2016, it is clear that their income comes mostly from official subsidies.

In accordance with all the above, it follows that the Foundation meets the requirements provided for in article 3.h) of Law 32/2010, which states "that the Authority's scope of action includes the treatments carried out (...) h) Natural or legal persons who fulfill public functions in relation to matters that are the responsibility of the Generalitat or local bodies, if it is files or treatments intended for the exercise of these functions and the treatment is carried out in Catalonia", since it is a non-profit guardianship entity whose purpose is to provide a public service of social services, specifically, the guardianship of people legally incapacitated (mentally disabled and for elderly people with dementia), that these services are currently included in the Social Services Portfolio of the Department of Labour, Social Affairs and Families and the processing of the data is carried out in Catalonia, and in addition receive public funding.

#### IV

The second query that the Foundation makes is "where they must communicate the name of the data protection delegate and any other information related to data protection in order to comply with the data protection law".

One of the novelties incorporated by European Regulation 2016/679 of the European Parliament and of the Council of April 27, 2016 regarding the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/EC (General Data Protection Regulation) (hereafter RGPD) in the field of personal data protection is the figure of the DPD.

Article 37 of the RGPD regulates its designation, and in its section 7 it states: "The person in charge or the person in charge of the treatment will publish the contact details of the data protection delegate and communicate them to the control authority. "

Therefore, the Foundation must make public the designation of the data protection officer and his contact details and must communicate them to the competent supervisory authority. In this case, the Foundation, being included in the scope of action of the APDCAT, must communicate the designation of the person appointed as data protection delegate to the APDCAT through the corresponding form, available at the Authority's electronic headquarters <https://seu.apd.cat/ca/tramits/DPD>.

In this form, the identification data of the person who will act as DPD must be recorded, being necessary, in this case, to inform them in advance of the communication of their data to the Authority.

Point out that it will also be necessary to notify the Authority of any modification affecting this designation, such as a change in the contact details of the DPD or through the , corresponding form (also available on the Authority's website).

Finally, regarding the query of: "any other information linked to data protection in order to comply with the data protection law".

The application of the RGD has led to significant changes in the protection of personal data, which is why the APDCAT has drawn up a catalog of resources aimed at implementing the new regulations. So you have at your disposal a set of regional, state and international regulations on data protection and other documents and tools of interest such as the APDCAT guides and the guidelines of the Article Working Group 29, in addition to other provisions adopted by the APDCAT (instructions, recommendations and other provisions). This information is available on the website: <http://apdcata.gencat.cat/ca/autoritat/normativa>

All of this without prejudice to the fact that you request other services made available by the APDCAT, such as the public assistance service that you can contact to request information or consult doubts in relation to the application of the legislation on the protection of personal data, or request information on courses, conferences, conferences, seminars and other training and outreach activities organized by the Authority or in which it participates. You can contact this service by email: [atenciopublic.apdcata@gencat.cat](mailto:atenciopublic.apdcata@gencat.cat).

In addition, you have a personalized consulting service to provide ongoing support for all the personal data protection regulation adaptation projects you carry out. To request the consulting service, you must address your request by email to: [serveideconsultoria.apdcata@gencat.cat](mailto:serveideconsultoria.apdcata@gencat.cat).

Finally, to inform you that, through the Authority's electronic headquarters <https://seu.apdcat.cat> apart from the communication from the Data Protection Officer, to which we have already referred, you can access the other information, services and procedures that the Authority makes available to you, among others:

1.-Notify security breaches of personal data: this notification must be formalized using the [notification form](#). Once the document has been generated in pdf format, with the electronically signed notification, it must be sent, together with the documentation that may be attached. If you are registered with EACAT you must submit the form using the generic submission of this platform, otherwise you must submit it through [E-TRAM](#)

2.-International transfers: in this section the Foundation can process the following files: binding corporate rules, authorization of international data transfers and/or communication of international data transfers. The request must be formalized using the [registration form](#). Once a pdf document has been generated [with the electronically signed application](#), you can send it, together with the attached documentation, through [ETRAM](#)

3.-Request an opinion: through the body representing the Foundation or your data protection delegate, you can request an opinion from the Authority regarding a specific issue. The request must be formalized through the electronic headquarters.

4.-Propose a prior consultation: the data controller may propose a prior consultation in relation to treatments that involve a high risk or on regulatory projects of the Generalitat with an impact on data protection. The request must be formalized using the form available at the headquarters

electronics Once a pdf document has been generated with the electronically signed application, you can send it, together with the attached documentation, through ETRAM.

In accordance with the considerations made in this opinion in relation to the query raised, the following are made,

### **Conclusions**

The Foundation is included in the assumption of article 156 b) of the Statute of Autonomy of Catalonia, specified in article 3.h) of Law 32/2010, of October 1, of the Catalan Data Protection Authority, so the Foundation's data processing is linked to the provision of the public service of social services, they are subject to control by the Catalan Data Protection Authority, for the purposes of the provisions of the data protection regulations.

In relation to the communication of the designation of the data protection delegate, the Foundation, being included in the scope of action of the APDCAT, must communicate it to the APDCAT.

Barcelona, June 11, 2018

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