

CNS 38/2018

Opinion on the query made by the Data Protection Delegate of a city council in relation to a request for a certificate of historic coexistence of a home submitted by an unregistered owner

A letter from the Data Protection Delegate of a town hall is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on a request for a certificate of historical coexistence of a home presented by a non-registered owner.

Specifically, it states that the owner of a home requests from the City Council a certificate of historic coexistence of a home that he owns but in which he has never been registered, for an eviction procedure. With these antecedents, the City Council inquires whether, in accordance with the current regulations on data protection, the requested certificate can be delivered.

Attached is the consultation of the aforementioned application in which it is stated that the certificate is required in the context of an eviction procedure carried out in 2014 in which the previous tenants left without paying the rent and without renounce the contract.

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

I

(...)

II

The consultation raises whether it could violate the applicable data protection regulations to issue a certificate of historic coexistence of a house to a person who, according to him, is the owner of the house for which the certificate is requested but in which it has never been registered.

In the application presented by this person to the city council, he explains that "We are requesting a certificate of coexistence and history, due to an eviction procedure completed in 2014, in which the former tenants left without paying the rent and without renouncing the contract".

In order to focus the query, it must be taken into account that the issuance of a certificate on the data contained in the municipal register of inhabitants constitutes processing of personal data.

Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), is applicable to "fully or partially automated processing of personal data, as well as the non-automated processing of personal data contained in a file or intended to be included in it" and defines personal data as, "any information about an identified or identifiable natural person (I 'interested). Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier or one or more elements specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of this person".

Any processing of personal data, understood as "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" must be submitted to the principles and guarantees of the RGPD.

Article 6 of the RGPD regulates the cases in which the processing of personal data is lawful, and establishes:

1. The treatment is only lawful if at least one of the following conditions is met:

a) The interested party has given consent for the processing of their personal data, for one or several specific purposes. b) The treatment is necessary to execute a contract in which the interested party is a party or to apply pre-contractual measures at their request. c) The treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment. d) The treatment is necessary to protect the vital interests of the person concerned or of another natural person. e) 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. f) The treatment is necessary to satisfy legitimate interests pursued by the person in charge of the treatment or by a third party, as long as the interests or fundamental rights and freedoms of the interested party that require the protection of personal data do not prevail, especially if the interested is a child.

What is provided in letter f) of the first paragraph does not apply to the treatment carried out by public authorities in the exercise of their functions.

In accordance, therefore, with the current regulations on data protection, the processing of personal data by the city council in relation to the issuance of the registration certificate

requested, would require the consent of the possible interested parties or that one of the cases provided for in the aforementioned article 6 of the RGPC occurs.

In the absence of the consent of the interested persons who would have been registered in the home, it will be necessary to analyze whether there is any other legal basis than those provided for in the aforementioned article 6.1 of the RGPD that justifies the processing of data subject to the consultation.

III

The Register is an administrative register regulated by Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL).

According to article 16.1 LRBRL, "1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"

In the same sense, according to article 40.1 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC): "The municipal register is the administrative register containing the residents of a municipality. The data contained in the register constitute proof of residence in the municipality and usual address.

The certifications issued by the town councils on this data have the character of a public document and, consequently, enjoy the presumption of veracity and prove the data recorded in them, for all administrative purposes.(...)."

Royal Decree 1690/1986, of July 11, approving the Population and Demarcation of Local Entities (RPDTEL), provides the following in article 53:

"1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes."

Since the municipal register of inhabitants is an **administrative record**, the following must be taken into account.

Article 13 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC) recognizes in section d) the right of access "to public information, files and records, in accordance with the provisions of Law 19/2013, of 9

of December, transparency, access to public information and good government and the rest of the Legal Order."

In the area of Catalonia it is necessary to take into account Law 19/2014, of 29 December, on transparency, access to public information and good governance (LTC). Specifically, for the purposes that interest us, the first additional provision, which provides the following:

"2. Access to public information in subjects that have established a special access regime is regulated by their specific regulations and, additionally, by this law."

In the same vein, the first additional provision of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced.

Therefore, by application of the aforementioned provisions of the LPAC and the LTC, it is necessary to preferentially apply the specific regulatory regulations of the Register, which establishes a special access regime, for the purposes of determining the legal authorization for communication of the personal data that may be contained therein.

Regarding the data included in the Register, article 16.2 LRBRL provides that:

"2. The registration in the Municipal Register will contain as mandatory only the following data: a) Name and surname. b) Sex. c) Usual address. d) Nationality. e) Place and date of birth. f) Number of national identity document or, in the case of foreigners: (...)."

According to article 40 of the TRLMRLC:

"(...).

40.2 The data contained in the municipal register are confidential. Access to this data is governed by the rules governing citizens' administrative access to archives and public records and by Law 5/2002, of April 19, of the Catalan Data Protection Agency.

40.3 Without prejudice to the provisions of section 2 and without requiring the consent of the person concerned, the data of the register may be communicated to other public administrations that request it, when they are necessary to exercise the respective powers, and exclusively for the matters in which it is relevant to know the residence or address."

It follows from these precepts that the data of the register are confidential, and access to this data, except in cases of transfer to other Public Administrations in the terms provided for

in articles 40.2 of the TRLMRLC and 53.2 of the RPDETEL, it is governed by the provisions of the data protection regulations and Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter LPAC).

This is what the jurisprudence has included, among others, the sentence of the National Court of February 2, 2001: *"The data of the Register are confidential, because they contain data specific to the privacy of the registered, as inferred from the simple reading of article 16.2 of the Basic Law of Local Government, where the data that must be included in the Register are set out; and which are subject to Law 5/1992, with the only exception contained in article 11.3 of the Basic Law of Local Government, previously transcribed."*

This, without prejudice to the fact that individuals may request registration certificates or flyers (arts. 53.1 and 61 RPDETEL, and art. 8.1.1 of the Resolution of January 30, 2015, of the President of the National Institute of Statistics and of the Director General of Coordination of Competences with Autonomous Communities and Local Entities, by which technical instructions are given to councils on the management of the municipal register), not only in relation to the personal data itself but also, in certain cases, in relation to data of third-party natural persons, as long as there is authorization from the affected person, or sufficient legal authorization.

Thus, access by one of the registered persons to all of their data contained in the municipal register would not raise any doubts from the point of view of the protection of personal data. Conversely, access by one of the registered persons to the register data of the other registered persons would constitute a transfer of data to third parties and, therefore, for the purposes of the data protection regulations, in these moments the RGPD, it would be necessary to count on the consent of those affected or that any other of the legal bases provided for in art. 6.1 of the RGPD is given.

This issue has been the subject of analysis in Opinions CNS 43/2017 and CNS 45/2017, in which it is concluded that a person registered in a home can obtain from the City Council (administrative competent in the management of the Register), a document in which all registered persons are listed for the purposes of certifying residence and habitual address, a purpose that would be framed within the provisions of article 16 LRBRL and 40 TRLMRLC. On this legal basis, the data protection regulations (Article 6.1.e) of the RGPD would lead to consider the communication lawful, when this is necessary for the fulfillment of a mission carried out in the exercise of public powers conferred on the person in charge of treatment. Thus, the inclusion in the registration certificates or leaflets of the identification data relating to the names and surnames of all the people registered in the same address for the purposes of certifying cohabitation, at the request of one of these people, it would not be contrary to the regulations for the protection of personal data.

As this Authority has agreed in the aforementioned opinions, in the event that the applicant for the information is registered at the address in question, the information on the first and last names of the persons registered at the same address, and the information on the period in which they have resided in the same property constitutes personal information of the same applicant. Thus, knowing that a person shares a home with others would affect all the people who live there, so it would not seem logical to attribute to one of them (the registered applicant) the status of a third party before the eventual access to this information.

In the case of the inquiry raised by the Data Protection Delegate of a town hall, it is a request for information on the registration of third parties in a home of which the applicant is the owner, but not there is the circumstance that this is one of those registered.

As we have seen, the specific regime of access to the data of the Register (LRBRL and TRLMRLC) does not, in general, provide for the access of non-registered individuals to other people's register data without their consent. Therefore, in accordance with this regulation, the requested certificate should be refused.

However, it must be taken into consideration, even though the request for the certificate does not seem to be made under the protection of the regulations that regulate citizens' access to public information, the possibility that these regulations, as supplementary to the specific regime provided for by the municipal register of inhabitants, allow the communication of the requested information.

IV

According to article 20.1 of the LTC, the right of access to public information (art. 2.b) LTC), is guaranteed to all people, in accordance with what is established by the same LTC.

When the public information to which you want to access contains personal data, it will be necessary to analyze whether this data is specially protected in accordance with art. 23 LTC (including the special categories of personal data provided for in article 9 of the RGPD), or if it is other information that contains personal data not included in article 23 of the LTC.

In the case of requests for access to public information that contains personal data that is not considered to be particularly protected, access to this information may be granted with prior weighting of the public interest in disclosure and the right of the affected persons (art. 24.2 LTC).

Taking into account that the data contained in the Register (16.2 LRBRL and 41 TRLMRLC) would not be particularly protected data, to determine whether it is possible to access the same it will be necessary to carry out the aforementioned weighting following the criteria of article 24.2 of LTC, according to which:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with **prior weighting of the public interest in disclosure and the rights of the affected persons**. 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."

In the same sense, Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), establishes the weighting criteria in article 15.3, according to which:

"3. When the requested information does not contain specially protected data, the body to which the request is addressed must grant access after a sufficiently reasoned weighting of the public interest in the disclosure of the information and the rights of those affected whose data appear in the requested information, in particular their fundamental right to the protection of personal data.

In order to carry out this weighting, the aforementioned body must take the following criteria into particular consideration: a) The least damage to those affected resulting from the passage of the terms established by article 57 of Law 16/1985, of 25 of June, of the Spanish historical heritage. b) The justification by the applicants of their request in the exercise of a right or the fact that they have the status of researchers and motivate the access for historical, scientific or statistical purposes. c) The least prejudice to the rights of those affected in the event that the documents only contain data of a merely identifying nature of those. d) The greatest guarantee of the rights of those affected in the event that the data contained in the document may affect their privacy or security, or refer to minors."

Article 18.2 of the LTC, establishes that the exercise of the right of access to public information "(...) is not conditioned on the concurrence of a personal interest, is not subject to motivation and does not require the invocation of any rule." It is not necessary, therefore, that there is a personal interest, or that there is a specific motivation to request access, although the fact of knowing the purpose for which you want to access the information is an element to have taken into account when weighing up this interest or purpose and the right of the person or persons affected, holders of the data (in this case, the possible registered persons).

It is worth saying that the right of access to public information can legitimately respond to particular interests (the Preamble of the LTC mentions the principle of "absence of interest and motivation in the demand for access") . The private or particular dimension of the right of access to public information is specified by allowing people to access information that may be of interest to their sphere of particular interests and in this sense, the purpose of access plays an essential role when weighing between the two rights at stake. In fact, as we have seen, the particular interest that can be pursued by the applicant with access, is provided as a weighting criterion in article 15.3.b) of the LT, mentioned, by expressly establishing that it is necessary take into consideration "The justification by the applicants of their request in the exercise of a right (...)".

In the case at hand, it will be necessary to make the corresponding weighting and examine whether there is a personal or particular interest in the applicant, which could justify the communication of the requested information.

As can be seen from the information sent by the city council and accompanying its consultation, the claim of the applicant for the registry certificate is part of an eviction procedure that took place in 2014, in relation to some people who would have been registered in the housing in question as a result of a lease agreement and, regarding whom the applicant states: "the old tenants left without paying the rent and without renouncing the contract". It is not specified what the specific purpose of having this certificate is, but it would seem that it is related to the exercise of rights in relation to this eviction and non-payment of rent.

The status of owner of the applicant may entail the existence of a personal and direct interest in knowing certain information relating to the registry situation of third parties in the address of their property, which would probably have to do with the exercise of the rights and defense of the applicant's own interests that may be recognized by current regulations, in relation to the eviction procedure referred to and its consequences.

As an example, Law 29/1994, of November 24, on Urban Leases (LAU) in relation to Law 1/2000, of January 7, on Civil Procedures (LEC), recognize certain owners rights for the exercise of which, in some cases, could require knowing certain registry information. Thus article 27 of the LAU establishes:

"Article 27. Breach of obligations.

1. The non-fulfillment by any of the parties of the obligations resulting from the contract will entitle the party that had fulfilled its obligations to demand the fulfillment of the obligation or to promote the resolution of the contract in accordance with article 1.124 of the Civil Code .

2. In addition, the lessor will be able to terminate the contract as of right as follows causes:

a) Failure to pay the rent or, as the case may be, any of the amounts whose payment has been assumed or is due to the lessee. b) Failure to pay the amount of the deposit or its update. c) Unconsented sublease or assignment.(...)"

And article 704 of the LEC:

" Article 704. Occupants of buildings that must be surrendered.

1. When the property whose possession must be surrendered is outside the habitual residence of the executor or those who depend on him, the Attorney of the Administration of Justice will give them a period of one month to vacate it. If there is a valid reason, this period can be extended by one more month. Once the specified deadlines have passed, the launch will proceed immediately, setting the date of this in the initial resolution or in which the extension is agreed.

2. If the property whose delivery is required by the executive title is occupied by third parties other than the executed party and those who share the use of it with him, the Attorney of the Administration of Justice responsible for the execution, as soon as he becomes aware of its existence, The enforcement office will notify them of the pending execution, so that, within ten days, they present the documents that justify their situation. The executor will be able to ask the court to evict those who he considers de facto occupants or without sufficient title. This petition will be forwarded to the persons designated by the executor, proceeding with the proceedings in accordance with the provisions of sections 3 and 4 of article 675."

The purpose of the Register is, precisely, to constitute proof of residence in the municipality and of habitual residence in it (art. 16.1 LRBRL), and its objective is "to record a fact" (section 2.3 Resolution of 30 January 2015), as is the actual fact of residence and registration.

In short, the information requested would make it possible to verify whether the registration existed, which people were registered and for what period of time, a purpose that, on the one hand, can be considered to be concurrent with a person who is the owner and that could allow him to exercise legitimate rights.

On the other hand, for the purposes of the weighting of Article 24.2 LTC, it is necessary to take into account the effect that the communication of information could have on the rights of the affected persons, in this case, of the persons who could be registered in housing.

In this sense, for weighting purposes, it must be taken into account if those affected whose data would appear in the certificate are minors (art. 24.2.c), since in matters of data protection the information of minors must to be treated with special care since it is based on the basic legal principle of the child's best interests. Consequently, in the case of registered minors, it would be necessary to assess the possibility of not including their personal data in the communication of the corresponding information since these would not seem necessary to achieve the purpose of the access. It might be sufficient to include the number of registered minors and their ages.

Another of the weighting criteria provided for in the aforementioned article 15.3.c) LT, is "The least harm to the rights of those affected in the event that the documents only contain data of a merely identifying nature". In the case we are dealing with, only the identity of the registered persons and the time during which they were registered would be communicated to the applicant, and therefore the weighting would be favorable to the right of the information requester.

For all the above, bearing in mind that the requester of the information is the owner of the house; that the purpose of the access would be to be able to verify the people who would have been registered and the time during which they were so - for the purposes of being able to exercise the rights and legal actions that correspond to the owner-; that the data to be communicated are merely identifying; and, that it does not seem that the communication of information should lead to a significant prejudice for the right to data protection of those affected (except in the case of minors), it can be concluded that the data protection regulations are not an impediment for communicate the requested information.

Finally, in relation to affecting the rights or interests of third parties, it is necessary to emphasize the importance of transferring the request to these affected persons (the person or persons who would be registered at the domicile), as provided for in the articles 31.1 and 42 of the LTC, by the City Council, so that it can be known if there is a specific personal circumstance that justifies the limitation of the right of access.

v

In accordance with the considerations made in these legal foundations in relation to the query raised by the Data Protection Delegate of a town hall, in relation to whether the request for a certificate of historic coexistence of a dwelling presented by a non-registered owner may constitute a violation of personal data protection legislation, the following are done,

Conclusions

The specific regime of access to the data of the Municipal Register of Inhabitants (LRBRL and TRLMRLC) does not, in general, provide for the access of unregistered individuals to other people's register data.

The data protection regulations would not prevent access to the data of the register relating to the historical coexistence in a home at the request of the owner of the same protected in Law 19/2014, of December 29, on transparency, access to information public and good governance, provided that, once the rights at stake have been weighed, there is a direct interest in the requester of the information and this communication of information does not entail a significant prejudice to the right to data protection of the people affected.

Barcelona, July 18, 2018

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