

CNS 40/2018

Opinion in relation to a consultation of a municipal grievance trustee on direct access to a municipal application for processing administrative files

A letter from a municipal grievance ombudsman is presented to the Catalan Data Protection Authority in which he requests the opinion of this Authority on direct access to a municipal application for processing administrative files managed by a town hall.

Having analyzed the request, which is not accompanied by other documentation, and having seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

As set out in the consultation, the municipal grievance trustee wants to directly access the municipal application, in order to carry out consultations regarding the complaints that are made relating to the processing of administrative files for urban discipline and building licenses. 'activities.

First of all, you need to analyze whether the data you want to access is personal data and therefore subject to the regulations on personal data protection.

The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD) applies "to the total or partially automated processing of personal data, as well as the non-automated processing of personal data contained or intended to be included in a file" (article 2.1), meaning by personal data "all information about an identified or identifiable natural person ("the interested party").

In this sense, the RGPD specifies that identifiable is "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 an or various elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person" (article 4.1)).

It should also be taken into account that the RGPD defines data processing 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, modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2)).

According to the City Council's website, the application is the computer program used by the City Council to manage the disciplinary files of works, activities and use of public space, from its inception to in your archive.

Thus, there can be no doubt that the information contained in this application may contain personal information linked to files regarding which complaints or complaints have been submitted. These data, to the extent that they refer to identifiable natural persons, are considered personal data and are therefore protected by the regulations on the protection of personal data.

Consequently, any treatment of this data by the consulting municipal grievance trustee is subject to the principles and obligations contained in the data protection regulations.

III

Secondly, it is necessary to analyze whether the treatment by the municipal grievance trustee of the data available to the City Council would be a lawful treatment for the purposes of the provisions of the RGPD.

The RGPD establishes that all processing of personal data must be lawful (Article 5.1.a)) and, in this sense, establishes a system of legitimizing the processing of data that is based on the need for one of the legal bases to be met established in its article 6.1.

The aforementioned article 6.1 of the RGPD provides, specifically, that:

"1. The treatment will only be lawful if at least one of the following conditions is met: a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures; c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment; d) the treatment is necessary to protect the vital interests of the interested party or another natural person; e) the treatment is necessary for the fulfillment of 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 for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions."

Section 3 of this precept provides: "the basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) the Law of the Union, or

b) the Law of the Member States that applies to the person in charge of treatment

The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred to the person in charge of the treatment."

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

The Municipal and Local Regime Law of Catalonia (revised text approved by Legislative Decree 2/2003, of April 28), in article 48.2 section c) establishes that the municipalities, in the exercise of their power of self-organization, may establish a trustee or a municipal trustee for grievances.

The City Council has regulated this Institution in the Organic Regulations of the Municipal Grievance Board, approved by the plenary session of the Municipal Council on March 21, 2003, and the Government Commission Agreement of January 19, 2005, complementary to the organization and operation.

Subsequently, the Parliament of Catalonia, through Law 18/2014 amending Law 22/1998, of December 30, of the Municipal Charter of Barcelona, added a new title, the ninth, relating to the Municipal Complaints Board .

According to article 143 of Law 22/1998, of December 30, of the Barcelona Municipal Charter, this municipal institution's mission is to defend fundamental rights and public freedoms, especially those contained in the European Charter of Safeguarding of human rights in the city, of all the citizens of Barcelona and of the people who are there, even if they are not residents, in everything that affects the administrative activity of the City Council, of its bodies self-employed and other entities providing public services that depend on them. For this purpose, the Syndicate will be able to supervise the activities of the municipal administration.

In order to make this supervisory function effective, Base III of the Regulation of the Municipal Grievance Ombudsman makes it clear that: "3. The Mayor will channel the requests of the Grievance Ombudsman and will give the appropriate instructions to the municipal organization so that the data, files and other necessary documents are supplied to allow the investigative actions to be properly carried out". In the same sense, point 2.4 of the complementary aspects of the organization and operation of the Municipal Grievance Ombudsman approved by the Government Commission in the session of January 19, 2005 is explained.

Consequently, given the aforementioned regulatory provisions, the municipal grievance trustee has legal authority to supervise the City Council's activity. Thus, in this case the processing of the data carried out in the exercise of the functions entrusted to the trustee may be legitimated according to article 6.1 e) of the RGPD, according to which: "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment".

In addition, the Municipal Grievance Board is an independent institution linked to the City Council, therefore, any access by the Ombudsman to information from the City Council,

regardless of the mechanism used to articulate this access, it constitutes a data communication. Therefore, the City Council will have to communicate only the personal data necessary for the fulfillment of the legitimate functions entrusted to it (Article 5.1 c) RGPD).

IV

From here, the consultation states that: "in order to achieve greater effectiveness in its supervisory action and more qualitative results for citizens, we consider it necessary to be able to directly access the municipal application, for to carry out consultations relating to the complaints that are formulated relating to the processing of administrative files of urban planning discipline and activity licences".

The municipal grievance ombudsman justifies the request for direct access to the municipal application by the fact that the way in which these complaints are currently channeled excessively slows down the processing of complaints, resulting in inadequate response times to citizens to the principles of good administration.

Currently, the Mayor channels the requests of the municipal grievance trustee and gives the appropriate instructions to the municipal organization in order to supply the necessary data, files and other documents that allow the trustee's investigative actions to be properly carried out (Base III, point 3 of the Institution's Regulations), but it is not specified how to articulate this communication.

In this sense, article 3.2 of Law 40/2015, of October 1, on the legal regime of the public sector provides that: "public administrations must relate to each other and to their organs, public bodies and related or dependent entities through electronic means that ensure the interoperability and security of the systems and solutions adopted by each of them, must guarantee the protection of personal data and must preferably facilitate the joint provision of services to those interested".

In principle, this prioritization of electronic media to articulate the communication of personal information to the municipal grievance trustee, could certainly contribute to a more agile processing and resolution of the complaints that must be resolved by the municipal grievance trustee and is a possibility that does not contradict the communication of the data.

However, this access, should it occur, must be adequate, relevant and limited to the fulfillment of the investigative functions of the municipal grievance trustee, as required by the principle of data minimization (Article 5.1 c) RGPD).

In accordance with the principle of data minimization, article 5.1 c) of the RGPD provides that: "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed".

As has already been said, the application is the computer program used by the City Council to manage the disciplinary files of works, activities and use of public space from its inception to its file. This entails the processing of a high volume of files and inspections that are carried out annually, a high number of possible affected persons and that may contain personal information of various natures, among which it cannot be ruled out that there are even data of special categories (for example, data on disabilities).

Having said that, from the information that is available and in the terms in which the query is made, it would seem that "direct access" could imply access to all the files contained in the application without any type of restriction, entailing a generalized and indiscriminate access to all the content of the municipal application.

On the other hand, by virtue of the principle of minimization, only the possibility of being able to access the specific files, or parts of files, to which the investigations of the Ombudsman refer is appropriate.

In this sense, recital 31 of the RGD makes it clear: "Public authorities' communication requests must always be submitted in writing, in a motivated and occasional manner, and must not refer to the entirety of a file or give rise to the interconnection of several files. The treatment of personal data by said public authorities must be in accordance with the regulations on data protection that are applicable depending on the purpose of the treatment".

In this case, and from the perspective of data protection regulations, facilitating direct access to the application as suggested by the municipal grievance trustee, would not be in line with the principle of data minimization.

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

Conclusions

Given the aforementioned regulatory provisions, the municipal grievance trustee has the authority to ask the City Council for the information necessary for the fulfillment of its functions.

From the perspective of data protection regulations and the information available, in the specific case examined, providing the municipal grievance trustee with direct access to the municipal application would not be in line with the principle of minimizing data and could pose a risk for the adequate protection of citizens' personal information.

Barcelona, July 25, 2018