

CNS 46/2018

**Opinion in relation to the consultation of a City Council on the possibility of including the name and surname of the person concerned from the works or activity license files in the inventories of documents incorporated in the Transparency Portal**

A letter from a City Council is presented to the Catalan Data Protection Authority, in which a report is requested to this Authority on the possibility of including the name and surname of the interested party in the works or activity license files in the inventories of documents included in the Transparency Portal.

Having analyzed the request, which is not accompanied by further information, in view of the current applicable regulations and the report of the Legal Counsel, the following is ruled.

I

(...)

II

According to the query, the City Council wants to publish the inventory of documentation on the Transparency Portal, specifically, the one corresponding to municipal works licenses.

In relation to the metadata of the inventories of licenses for works or activities in the Transparency Portal, the query refers to:

- "1. The metadata that is already collected in the inventory
2. The identifying and necessary metadata for locating the documentation
3. The minimum mandatory metadata according to the National Interoperability Scheme 4. The metadata affected by the data protection regulations and the type of affect."

According to the consultation, apart from the metadata referred to, the inventories would also incorporate the object of the license and the location of the license.

The query asks if "We and/or can we include the name and surname of the interested party from the works or activity license files in the inventories of documents that we incorporate into the Transparency Portal?".

We note that, according to the consultation, "the problem of the only metadata affected by the data protection regulations is raised", in reference, according to the consultation, to the name and surname of the person concerned in the license files of works or activities.

Given the consultation in these terms, it is necessary to start from the basis that, according to article 4.1) of Regulation (EU) 2016/679, of April 27, general data protection (RGPD), are

personal data "all information about an identified or identifiable natural person ("the interested party"); 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 one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person;

Regarding this, it should be borne in mind that it would be personal information subject to the principles and guarantees of the data protection regulations (RGPD), all that information included in the inventories of documentation of licenses for works and activities, which refers to and provides information on an identified or identifiable natural person. Therefore, not only your identifying data (name, surname, ID, address, etc.), but also other information (for example, financial data, information related to a property you own, etc.), which gives information about this same person.

### III

Having said that, in relation to access to public documents, article 34 of Law 10/2001, of 13 July, on archives and documents, provides the following:

"1. People have the right to access public documents under the terms and **conditions established by Law 19/2014**, of December 29, on transparency, access to public information and good governance, and the rest of the regulations that are applicable.

2. The public administrations and archives that are part of the Catalan Archives System must be provided with the necessary resources and technical means to facilitate the exercise of the right of access to documents by citizens."

Article 35 of Law 10/2001, to which the consultation refers, provides that:

"1. In order for users to be able to locate and identify the documents and be able to access them, the archives of the Catalan Archives System must comply with the following **transparency obligations** :

a) Make public the **documentary description instruments** that allow researchers and citizens to locate the documentation they have.

(...)

d) Inform users of the right to complain and the procedures they must follow in the event that the right of access is denied.

2. The information referred to in section 1 must be available for consultation on **the transparency portal and on the electronic headquarters** or website of the body in charge of the archive and document management service."

Thus, the "inventories of documentation", specifically, the inventory of municipal licenses to which the query refers, would be a "documentary description instrument", which, according to the regulations (art. 35.1.2 Law 10/2001) , the City Council should make public.

However, at the outset, it does not follow from this regulatory provision that the documentation inventories cited must necessarily include, and in all cases, the personal data that the inventories may include. The inventory must describe the

typology of the documents available, but it must not incorporate the data contained in these documents

On the other hand, it will be necessary to take into account the regulations on transparency, specifically, Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), as well as Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC).

According to article 5.4 of the LTC, the Transparency Portal "is the basic and general instrument for managing public documents to give compliance and effectiveness to the transparency obligations established by the Law, and in its electronic or corresponding websites."

Article 11 of the LT provides that:

"The Transparency Portal will contain published information in accordance with the **technical prescriptions** that are established by law, which must comply with the following principles:

(...)

b) **Interoperability**: the information published will be in accordance with the National Interoperability Scheme, approved by Royal Decree 4/2010, of January 8, as well as the technical standards for interoperability. (...)."

According to article 1.2 of RD 4/2010, of January 8, which regulates the National Interoperability Scheme in the field of electronic administration (RD 4/2010):

"2. The National Interoperability Scheme will include the criteria and recommendations for security, standardization and conservation of information, formats and applications that must be taken into account by public administrations to ensure an adequate level of organizational, semantic and technical interoperability the data, information and services that they manage in the exercise of their powers and to avoid discrimination against citizens due to their technological choice."

According to the first additional provision of RD 4/2010:

1. The following technical standards of interoperability will be developed that will be mandatory for public administrations: (...) b) Electronic document: it will deal with the **mandatory minimum metadata**, the association of data and signature or timestamp metadata, as well as other associated complementary metadata; and document formats. (...)."

According to the Glossary of the Annex of RD 4/2010:

"Metadata: Data that defines and describes other data. There are different types of metadata according to their application.

Document management metadata: Structured or semi-structured information that makes it possible to create, manage and use documents over time in the context of their creation. Document management metadata is used to identify, authenticate and contextualize documents, and likewise to them

people, the processes and the systems that create, manage, maintain and use them.”

According to the "Guide to the Application of the Technical Interoperability Standard", of the Ministry of Finance and Public Administrations ([https:// administracionelectronica.gob.es](https://administracionelectronica.gob.es)): "The mandatory minimum metadata constitute a minimum set of information defined in order to facilitate the immediate and automated knowledge of the basic characteristics of the electronic file that allow its contextualization within the framework of the organization and administrative procedure to which it corresponds.”

Article 21.1 of RD 4/2010 provides that:

"1. Public administrations will adopt the necessary organizational and technical measures in order to **guarantee interoperability** in relation to the **recovery and conservation** of electronic documents throughout their life cycle. Such measures will include:

(...)

d) The association of the **mandatory minimum metadata** and, where appropriate, complementary, associated with the electronic document, throughout its life cycle, and incorporation into the metadata scheme.

(...)

g) The complete and immediate access to the documents through online consultation methods that allow the visualization of the documents with all the details of their content, the exhaustive and relevant recovery of the documents, the copying or downloading online in the original formats and the paper printing of those documents that are necessary. The system will allow consultation during the entire conservation period of at least the electronic signature, **including, where applicable**, the time stamp, and the **metadata associated with the document**.

(...).”

To this it should be added that, as the consultation points out, Annex I of the Resolution of July 19, 2011, of the Secretary of State for the Public Service, which approves the technical standard for interoperability of electronic files, identifies the "minimum mandatory metadata of electronic records". Among others, said Annex contains the metadata "Interested", regarding which it is foreseen that, if he is a "citizen or legal entity", he will be identified with the "DNI, NIE, NIF or similar".

From these regulatory provisions (RD 4/2010) it follows that the "minimum mandatory metadata" -among which, of course, it is planned to include identification data of physical persons-, are intended to comply with the principle of interoperability (art. 11.b) LT), that is to say, enable the management and conservation of the electronic document itself.

However, the need to comply with the principle of interoperability, and the fact that the regulations provide for the use of metadata for the purposes of the treatment, recovery and conservation of electronic documents (arts. 21 et seq. RD 4/2010) , must not lead to the widespread dissemination of personal data of the affected persons unless, based on the regulations that are applicable, there is sufficient authorization for said dissemination, in the terms set forth in the consultation.

Along these lines, if we adhere to the provision referring to "complete and immediate access to documents" (art. 21.1.g) RD 4/2010), it is foreseen that this access, through means of online consultation, it must include "if applicable", the metadata associated with the document.

In this sense, obviously, access to electronic documents must occur in terms that are adjusted to the requirements of the transparency regulations and, where appropriate, to the regulations for the protection of personal data (art. 7 LTC) . And it would not be publishing the document with the ID numbers of the people affected, so that it could be related (through the object of the license) to a specific person.

For all of the above, even though, for the purposes of interoperability certain electronic documents must include metadata that can make the affected persons identifiable, it cannot be inferred from this that this information must be publicly and generally accessible for any third party, unless the consent of the affected person is available, or there is a sufficient enabling basis, based on the principle of legality (art. 5.1.a) RGPD) to disseminate this personal information .

With more reason, this metadata that allows the identification of the natural persons affected will not be necessary when it comes to documents - such as the inventory to which the query refers - which, by their nature, do not require the identification of natural persons - in the case that concerns us only requires the description of the documentary typology-.

#### IV

Beyond the considerations that have just been made about the Inventory of documents, the LTC also foresees the possibility of disseminating other information without the need for citizens to request access, which may affect the subject of this opinion.

Thus, according to article 2.i) LTC is active publicity: "the duty of the subjects obliged to make public, ex officio, the contents of public information determined by chapter II of title II."

In relation to the publication of information on urban planning, the Administration must make public the general territorial plan, the partial territorial plans, the territorial master plans, the sectoral territorial plans, the urban master plans, and the plans of 'municipal planning, among others (art. 12.4 LTC). And, on the other hand, article 10.2.d) of the LTC, in relation to article 10.2 of the same rule, establishes the information that must be made public, in terms of active advertising, in relation to decisions and actions of legal relevance, including:

"(...) the various texts of the provisions and **the relationship and evaluation of the documents originating from the public information and citizen participation procedures** (...)", specifying in paragraph 2 of the same article 10 LTC that "the information must also include the documents that, in accordance with the applicable regulations, must be subject to a period of public information during the processing (...)".

But beyond that, the sectoral regulations, specifically article 8 of the revised text of the Urban planning law (TRLU), approved by Legislative Decree 1/2010, of August 3, regulates advertising and participation in urban planning and management processes, and provides that:

"(...)

3. Urban planning and management processes, and the content of planning figures and management instruments, including agreements, are subject to the principle of publicity."

4. Everyone has the right to obtain from the bodies of the competent administration the certified data that allow them to assume their obligations and the exercise of urban planning activity.

5. The public has the right to consult and be informed about the content of urban planning and management instruments and, for these purposes: a) In the public information of urban planning instruments, it is necessary, together with the plan, to expose a document including the following points:

(...)."

Decree 305/2006, of July 18, which approves the Planning Law Regulations (RLU), contains provisions on information rights regarding planning procedures (art. 19), as well as regulation of citizens' information rights and participation in urban planning activity, and it includes, among others, citizen participation and public information on planning instruments (arts. 21 et seq.).

In any case, it cannot be inferred from these forecasts that the information that Public Administrations must provide in terms of active advertising in urban planning matters must generally include the identity of people applying for planning licenses.

It should be borne in mind, however, that article 8.1 establishes that "any matter of public interest" (letter m)) and also "matters and actions whose publicity is established by law" must also be made public ( letter l)).

In this sense, as this Authority has done (among others, in the IAI reports 10/2016, or 31/2016) it is necessary to take into account Decree 179/1995, of June 13, which regulates the Regulation of works, activities and services of the local entities of Catalonia (ROAS), which provides for certain publicity to be given to agreements or resolutions granting licenses, as this Authority has done in the past.

Specifically, article 84 of the ROAS, which provides the following:

"1 Agreements or **resolutions granting licenses must be published in the manner provided for in the law and in the ordinances of the corporation.** In any case, they must be placed on the notice board **and published**, when available, in the municipal newsletter.

2 When it comes to construction works or installations referred to in sections 2 and 3 of article 75 of this Regulation, local ordinances may provide for the duty of the holder of the col- place in a place visible from the public road a standardized announcement that informs about the granting body, the date and the main urban characteristics of the license."

It should be remembered that in urban planning matters, all people have the status of interested parties without the need to prove special legitimacy, given the recognition, in the sectoral regulations, of public action, which justifies the need to have extensive information in this matter According to article 12.1 of the Revised Text of the Urbanism Law, approved by Legislative Decree 1/2010, of August 3 (TRLU):

"1. Any citizen, in the exercise of public action in matters of urban planning, may demand before the administrative bodies and before the administrative contentious jurisdiction the compliance with the legislation and urban planning, an exercise which must conform to what establish the applicable legislation."

The public action allows anyone to contest the various instruments of organization, as well as the acts of application thereof, which implies that the citizen must be able to have access and obtain a copy of the documents in the file whether it deals with pending files as if they were part of closed files.

In short, it would not be appropriate to publish the metadata consisting of no. of DNI of the people who have applied for planning licenses, on the occasion of the publication of the inventory of documents. However, the aforementioned forecasts would justify that any citizen should be able to know the urban planning licenses granted, including the first and last names of the people who have requested it. On the other hand, it would not be appropriate, by virtue of the principle of minimization (art. 5 GDPR), the inclusion of no. of DNI in the publication of the licenses granted, given that it is unnecessary for transparency purposes.

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

### **Conclusions**

It is not appropriate to publish the metadata consistent with the no. of DNI of the people who have applied for planning licenses, on the occasion of the publication of the inventory of documents. However, current legislation enables the publication of urban planning licenses granted, including the name and surname of the people who have requested it, without including other unnecessary identifying data such as the number. of ID

Barcelona, September 18, 2018