

Opinion in relation to the consultation on the use of electronic devices to collect data and report on transport tickets

A query is submitted to the Catalan Data Protection Authority regarding the use of electronic devices to collect data and report on transport tickets.

According to the query, the competent public administration (hereinafter, the Administration) collects data to issue subsidized and personalized transport tickets for people from certain groups.

In relation to the processing of these transport tickets, the following questions are asked:

1. If a certain type of electronic device to collect the handwritten signature and incorporate it into a form, is adequate and sufficient to comply with the obligation to inform which rights the users have in relation to the treatment of their data
2. If the wording on data protection that is proposed to be incorporated in the application forms, is normatively correct and sufficient.

Having analyzed the request, which is accompanied by a copy of the information clause that is planned to be incorporated into the application forms for personalized transport cards, and the current applicable regulations, and having seen the report of the Legal Counsel, it is ruled that Next:

I

(...)

II

According to the consultation, the Administration wants to convert all application forms for personalized transport cards (Large family or single-parent card, unemployed people, monthly subscriptions, etc.) into electronic ones. The Administration plans to use a form that, according to the query, will be filled out directly on the computer by the person from the Administration who attends to the applicant; once the form is filled in, the user will verify the information, read the conditions of use of the card and the information on data protection, and express their agreement by signing.

According to the query, the Administration wants to use a device so that the person who goes in person to the point of care to request the personalized card signs on a screen the acceptance of the conditions, and the rules of use and data processing.

The inquiry adds that the card types to be processed through this route are:

- T-Family (large or single-parent family) and T-Unemployed (people in a situation of unemployment who do some type of training for employment): According to the query, it is necessary to present supporting documentation to meet these requirements and document 'identity and, in some cases, photograph of the user.

- T-12 for children aged 4 to 12. According to the inquiry, the minors' information is only first and last name and date of birth, and the rest of the information refers to the father/mother or legal guardian.

More specifically, the consultation sets out different options for doing this procedure:

"Option 1: Device (like the one used by banking institutions) where the applicant makes the handwritten signature. This signature is added electronically to a form in which the person providing face-to-face care has entered the applicant's data. This form filled in with the data and signature is sent to our archives.

Before signing, we show the person a paper document, with information about the rules for using the transport card they are applying for and about basic data protection information.

Option 2: Double screen of the computer where the applicant's data is being entered in the form. Once entered, read and confirmed by the person requesting, sign by hand with a device like option 1.

Option 3: Device (tablet type) that incorporates the entire personalized card request form with all the information. The applicant signs, also in handwritten form, at the end of the application with the personal data already included and the information on the rules for using the transport card they are applying for and on the basic protection information of data This device will send the information to our files."

Given the available information, it appears that the device used to sign the request in options 1 and 2 would be the same, so we will refer to them together.

According to the inquiry, "in the three options the person will obtain a copy of the document he has signed with all his data incorporated".

The consultation states that: "(...), we need to know if the first option is sufficient to comply with the obligation to inform the interested parties, according to the new RPD".

The consultation is accompanied by a copy of the information clause that is expected to be provided to users who request the processing of the title in person, in order to inform them about the processing of their personal data.

III

The treatment of personal data of natural persons who apply, which, according to the consultation, is collected by the Administration to process the transport tickets (name and surname, date of birth, address, telephone, supporting documentation of compliance with the requirements in the case of the "T-Family" and T-Unemployed", and identity document), must submit to the

principles and guarantees of the personal data protection regulations, specifically, the General Data Protection Regulation (EU) 2016/679 (RGPD), which is fully applicable from May 25, 2018 (art. 99 RGPD).

According to article 4.1 of the RGPD, personal data is: "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;

According to the consultation, the Administration wants to "simplify the procedure, adapt it to current regulations, especially in everything that refers to electronic administration (...)."

The query specifically refers to the face-to-face processing of transport ticket requests in which: "We will use a form that will be filled out directly on the computer by the person (...) who is attending to the person requesting the card. Once the form is filled in, the user will verify the information, read the conditions of use of the card and the basic information on data protection.

He will express his agreement by signing."

Specifically, the Administration envisages the use of a "handwritten signature" that the interested party would add electronically to a form, either through a device similar - depending on the inquiry - to that used by banking entities (option 1 and 2), or through a "tablet-type" device (option 3).

The consultation does not provide specific information on the technical characteristics or specific services offered by the proposed devices, so this Authority cannot assess these characteristics or services from the perspective of data protection.

IV

With regard to the fulfillment of the duty of information to those affected, given that the case subject to consultation refers to the processing of data collected from the interested party (persons who request the issuance of a transport ticket), it is necessary to bear in mind taking into account the provisions of article 13 of the RGPD, according to which:

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection officer, if applicable;
- c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment;
- d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, as the case may be;

f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee a fair and transparent data processing:

a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period; b) the existence of the right to request from the person responsible for the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ; c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal; d) the right to present a claim before a control authority; e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data; f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

3. When the controller plans the further processing of personal data for a purpose other than that for which they were collected, he will provide the interested party, prior to said further processing, with information on that other purpose and any additional information relevant to of section 2.

4. The provisions of sections 1, 2 and 3 will not be applicable when and to the extent that the interested party already has the information."

As the controller (art. 4.7 RGPD) that collects and processes personal data for the issuance of transport tickets, it is up to the competent Administration to comply with the provisions of article 13 of the RGPD, through of the corresponding informative clauses.

According to article 12.1 of the RGPD: "The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relating to the treatment , in a concise, transparent, intelligible and easily accessible form, with clear and simple language, in particular any information directed specifically at a child. The information will be provided in writing or by other means, including, if appropriate, by electronic means.(...)."

According to the information provided, the Administration plans to provide information to users in layers, that is to say, by providing "Basic information on data protection" to those affected, and supplementing this information with what those affected can find on "the website" of the Administration ("Additional Information").

As this Authority has done in accordance with the "Guide for compliance with the duty to inform the RGPD" -which can be consulted on the [website: www.apd.cat](http://www.apd.cat)-, to make compatible the increase in the requirement of information that the RGPD introduces and the conciseness and understanding in the way of presenting it, the data protection authorities recommend, especially when the information is collected by electronic means, to adopt a model of information by layers or levels.

It is also appropriate to refer to the Draft Organic Law on the Protection of Personal Data, which is in parliamentary processing at the time of issuing this opinion, and which contains the so-called "layered information". Thus, according to article 11.1 of the Project:

"1. When the personal data is obtained from the affected person through electronic communication networks or in the framework of the provision of an information society service, as well as in those other cases expressly established by law or when so authorized the Spanish Agency for Data Protection, the person responsible for the treatment will be able to comply with the duty of information established in article 13 of Regulation (EU) 2016/679 by providing the affected person with the basic information referred to in the following section and by indicating an address electronically or another medium that allows easy and immediate access to the rest of the information."

For the purposes of complying with the duty to inform those affected (art. 13 RGPD), given the information provided, there is a substantial difference between options 1 and 2, on the one hand, and option 3, on the other. Thus, in option 1 and 2, a device would be used that does not allow viewing, before signing, neither the personal data entered in the form by a third person, nor the information clause relating to the treatment of this data.

With regard to option 3, from the information provided, it seems that the device would allow both the personal data of the affected person already included in the form to be viewed together, as well as the information on the rules for using the transport ticket and information on data processing (information clause).

Thus, signing in a device like the one provided for option 1 and 2, which does not allow the affected person to know what treatment he is authorizing, nor for what purposes, in short, which does not allow him to check the data that will be processed, the conditions and purposes of the treatment, as well as the rest of the information that the affected person must receive before the treatment begins (information clause), would not comply with the regulatory requirements in relation to the appropriate accreditation of compliance with the duty to inform those affected (arts. 12 and 13 RGPD).

Although it is foreseen that in any of the three proposed processing options "the person will obtain a copy of the document he has signed with all his data incorporated", this would not be sufficient to consider that option 1 and 2 are in line to the requirements of the regulations in relation to the duty to inform, because the information must be given prior to the start of data processing and through systems that allow adequate accreditation that the duty has been complied with to inform

In conclusion, given that options 1 and 2, raised, do not allow the affected person to view and sign a single document, in electronic format, that includes their data and the information they must receive about the treatment of these (art. 13 RGPD), from the perspective of the protection of personal data, it cannot be considered that this option allows to adequately accredit compliance with the duty to inform.

In addition, in the terms in which the signature is proposed in option 1 and 2, subject to consultation, the affected person will not be able to verify that the personal data, already entered in a form, are accurate, as he will not be able to view them on the device. This could put compliance with the principle of accuracy (art. 5.1.d) RGPD at risk, for example, in the event that the form is subsequently modified, or the signature is erroneously attached to a form that includes personal data or conditions of the treatment that does not correspond to what the person concerned intended to authorize.

A different question is that a device (such as option 3 could be) is put in place, which allows the person concerned to view the personal data entered in the form, and to be able to read the information clause on the treatment of their data and the conditions of use of the transport card, prior to the signature, and in the same act of signature.

In this sense, the use of electronic devices (such as the one in option 3, silver in the consultation) could be adjusted to the data protection regulations, as long as they incorporate the form already filled out with the data of the affected person, and that it can view them on the screen of the same device, together with the information on the processing of the data (information clause) and the information on the use of the transport ticket -which justifies the processing of the data-, of jointly and prior to signature. An information provided in these terms would allow adequate proof of compliance with the duty to inform those affected.

v

Having said that, below we refer to the content of the document "Written on data protection", which accompanies the consultation ("Basic information").

a) According to this document, the basis that legitimizes the processing of the data is the consent of the person concerned. However, according to the "Additional information" section, the legal basis of the treatment would not be consent but "the fulfillment of a legal obligation applicable to the person responsible for the treatment" (art. 6.1.c) RGPD).

At the outset, given that the data processing we are dealing with refers to the use by those affected of the public transport service and the management by the Public Administration, it seems that the enabling basis for the processing could be "compliance of a mission carried out in the public interest or in the exercise of public powers by the data controller" (art. 6.1.e) RGPD), and not the fulfillment of a legal obligation of the data controller.

Without prejudice to the fact that data processing may have more than one enabling basis of those provided for in article 6.1 RGPD, it is appropriate that the information provided to the affected respond exactly to the enabling basis (or bases) of each treatment of data

It is therefore appropriate to review the information included in the information clause on the enabling legal basis (or, where applicable, enabling bases) that correspond to the intended purposes.

b) According to article 13.2.c) of the RGPD, in the event that the enabling basis for data processing is consent, it is necessary to inform about the right to withdraw consent on the part of those affected, information that should be incorporated into the "Additional information" section of the document provided.

c) Regarding the exercise of the rights that the RGPD recognizes to those affected in relation to the processing of their data, the "Basic information" section does not include mention of certain rights, such as the right of opposition.

According to article 21, paragraph 1, of the RGPD:

"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of) , including the elaboration of profiles on the basis of said provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims."

Therefore, it would be appropriate to mention this right in the information clause, to the extent that data processing is based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers by the person in charge (6.1.e) RGPD) .

In any case, the reference to "other rights", which is made in this section, is not correct from the perspective of compliance with the duty of information, since it does not provide clear and precise information about the rights of the affected .

This, without prejudice to the fact that, through the web, the person in charge can supplement the information on how to exercise the rights.

d) In relation to the purposes of the treatment, the "*Additional information*" section provides that "*We record personal and travel data*".

It should be pointed out that both the data of those affected that are collected in the form and the travel data that the Administration must process are personal data for the purposes of the RGPD. Thus, from the perspective of data protection, it would be more appropriate to refer to "*We record the request data and travel data*."

e) In the section "*For how long will we keep the data*", a conservation is foreseen "*during the period of validity of the requested transport ticket*."

Taking into account that some of the transport tickets may be valid for many years, and that the processing of travel data is foreseen, for the purposes of the principle of minimization (art. 5.1.c) RGPD) and the principle of term limitation of conservation (art. 5.1.e) RGPD), it would be appropriate to consider whether travel data must be kept for periods of time that could be quite long, in relation to some transport tickets.

In the event that this long-term conservation is not sufficiently justified, the period of conservation of this data will have to be limited, in application of said principles.

VI

We agree that the informative clause that accompanies the query contains a clause according to which:

"If within 30 days you do not object to the proposed processing of your data, we understand that you consent to it. You can object to the processing of your data by calling the number (...)."

Taking into account recital 32 of the RGPD, we note that, according to article 4.11) of the RGPD, the consent of the interested party is: "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a statement or a clear affirmative action, the treatment of personal data that concerns him;"

Given that article 4.11 of the RGPD does not allow the possibility of obtaining the consent of those affected tacitly (which would be that consent that is deduced from an act of the interested party, from his inaction or from his silence) , the aforementioned clause, included in the document "Drawn on data protection", would not conform to the requirements of the RGPD.

In accordance with these considerations, the following are made,

Conclusions

1. Given that option 1 and 2, does not allow the affected person to view and sign a single document, in electronic format, that includes his data and the information he must receive about the treatment of these (art. 13 RGPD), from the perspective of the protection of personal data, it cannot be considered that this option allows to adequately certify compliance with the duty to inform those affected, notwithstanding that other systems (option 3) may allow this certification of compliance of the duty to inform.
2. The informative clause subject to consultation can be considered adequate to the requirements of the RGPD, if the considerations made in this opinion are taken into account.

Barcelona, 4 October 2018