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Opinion on the possibility of making public on the transparency portal the minutes of the sessions of the special transparency committee of a City Council.

The councilor and president of the Special Commission on Transparency of the City Council, (municipal body with rotating presidency of the different political groups) requests the opinion of this Authority in relation to the possibility that the minutes of the sessions of this commission may be object of active advertising under the transparency legislation.

Analyzed the consultation, which is accompanied by the minutes of the Commission's constitutive session, the legal reports issued by the General Secretary of the City Council and by the political group of the councilor formulating the consultation, and various minutes of sessions held by the Commission, and in accordance with the report of the Legal Counsel I issue the following

I

(...)

II

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), applicable from May 25, 2018 (article 99), defines personal data as "any information about an identifiable natural person (the interested party); any person whose 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;

"

Article 4.2 RGPD defines the treatment "any operation or set of operations carried out on personal data or sets of personal data, either 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, comparison or interconnection, limitation, deletion or destruction".

Article 5.1.a) RGPD establishes that all processing of personal data must be lawful, loyal and transparent in relation to the interested party ("lawfulness, loyalty and transparency"). In order for this treatment (disclosure of personal data that may be included in the documents subject to publication) to be lawful, one of the conditions provided for in Article 6 RGPD must be met and Article 9 RGPD must also be taken into account, in in the case of special categories of data.

Article 6.1 RGD provides that in order to carry out a treatment there must be a legal basis that legitimizes this treatment, either the consent of the affected person, or any of the other circumstances provided for in the same precept, such as "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c), and this is recognized on a legal basis in accordance with the provisions of sections 2 and 3 of the same article.

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 responsible for the 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 conferred public powers to the person in charge of the treatment."

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

The new Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (BOE No. 294 of December 6, 2018)) refers to the range of the rule necessary to establish these limitations:

"Article 8. Treatment of data covered by legal obligation, public interest or exercise of public powers."

1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when so provided by a law of the European Union or a rule with the rank of law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation.

Said rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679.

2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016/679 , when it derives from a competence attributed by a rule with the rank of law."

Law 19/2014 regulates in Title II the regime of transparency in public activity through which it obliges all subjects including local bodies (article 3) to adopt the necessary measures to facilitate people's knowledge of the public information, which must be made public in the electronic offices and websites of the obliged subjects. Define the

"transparency" as "the proactive action of the Administration to make known the information relating to its areas of action and its obligations, on a permanent and updated basis, in a way that is more understandable for people and for through dissemination instruments that allow them broad and easy access to data and facilitate their participation in public affairs" (article 2.a) Law 19/2014.

From here, the doubt arises when determining whether the acts of the commission can be subject to active publicity, understood as the obligation of the subjects obliged to make determined by Chapter II of Title II".

Therefore, it is necessary to analyze whether the publication of these acts can be considered included in the active advertising regime provided for in Chapter II of Title II of the LTC (articles 8 to 15) and assess, if so, the limitations that may apply with respect to personal content information, in accordance with the criteria provided for in articles 23 and

Remember that, in accordance with article 7.1 of the LTC, "the limits applicable to transparency obligations are the same as those established by Title III for the right of access to public information, especially those relating to the protection of data."

It should be borne in mind that the fact that there are concurrent limitations regarding the publication of certain documents does not remove the possibility of publishing that information contained in the document that is considered to be of public interest and is not affected by the limitation .

Article 25 of the LTC expressly provides for the possibility of giving partial access to information by providing "the type of access and applicable, if partial, is established only affects the part corresponding section of the documentation, and restricted access to the rest of the data must be authorized." Considering that the limitations are equally applicable to transparency obligations, the possibility of partially publishing the information contained in a document must be understood as equally applicable.

III

Article 8 of the LTC lists the different types of information subject to the transparency regime, and obliges the Administration to make public, among others "l) the subjects publicity is established by rule" as well as "m) any matter of public interest, and that is most frequently requested through the exercise of the right of access to public information"

The minutes of the sessions of the collegiate bodies are the formal documents that record the deliberations and agreements adopted during these sessions in the terms established in article 110 of the TRLMRLC and article 109 of the Organizational Regulations , operation and legal regime of local bodies, approved by Royal Decree 2568/1986, of 28 November (hereafter ROF).

Article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia, obliges entities to "publish on their electronic site the minutes of the sessions

of the plenary." Beyond that, there is no other specific provision that obliges local bodies to publish the minutes of informative or special commissions.

However, the list of matters or actions included in article 8 is not a closed list. As has been pointed out, letter m) of this precept includes within the duty of active publicity any matter of public interest, as well as the information that is requested more frequently through the exercise of the right of access to public information. Consequently, this precept enables the administration to publish ex officio on the transparency portal that information that the city council considers to be of public interest. This without prejudice to the applicability, if applicable, of the limits provided for in the LTC itself (art. 7 LTC).

The City Council's 2015-2019 Municipal Directory refers to the Special Transparency Committee in point 1.2.1. of section II "Municipal organization: information commissions, areas and territorial councils", attributes to this body the specific task of "analyzing, controlling and publicizing the municipal accounts of companies, autonomous bodies, consortia or similar with municipal ties, with special attention to debt and public services. He will also be responsible for the control of concessions and contracting services and other issues that are brought to the attention of the members of the board".

Within the framework of its actions, it is provided that "the Commission will have the ability to commission reports, request appearances, issue conclusions and any other action deemed appropriate by agreement of its members."

The report of the General Secretary of the City Council points to the non-public nature of the sessions of this Commission, based on the regulations applicable to information commissions and the fact that people outside the Corporation are required to sign of a confidentiality agreement. This leads the General Secretariat to conclude that the minutes cannot be published.

This commission is made up of councilors from the different municipal groups and is chaired on a rotating basis, every six months, by a councilor who is not part of the municipal government, at the proposal of the corresponding Municipal Group and following the order of lowest to highest representativeness and each 6 months

The final paragraph of point 1.2.1. of section II of the Municipal Register refers to the subsidiary application of the operating rules of the Ordinary Commissions. Taking into account that the City Council does not have Municipal Organic Regulations (ROM), the rules for the operation of the informative commissions (study, report or consultation) provided for in articles 20.1 may apply to this commission. c) TRLBRL and 60.1 TRLMRLC for municipalities with more than five thousand inhabitants.

Article 227.2 of the ROF provides that the sessions of the information commissions are not public, without prejudice to the possibility of being convened, only for the purpose of hearing or receiving a report in relation to a specific matter, to representatives of certain associations or interested entities, and therefore, the possibility of citizens attending the debates and voting on the matters dealt with in these commissions is not foreseen.

However, the fact that the sessions are not open to the public and that non-corporate attendees are required to undertake confidentiality with respect to the matters they are aware of (officials or public employees also have this duty of confidentiality), does not remove that in attention to the public interest that the deliberations may have and

matters dealt with and under the protection of article 8 m) of the LTC, the subsequent publication of the information contained in the minutes may be agreed ex officio. Of course, as long as the limitations provided for in the LTC itself are taken into account (articles 20 et seq.

Remember that the information contained in the acts is public information for the purposes of article 2.b) of the LTC "Information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this Law", and as such, remains subject to the transparency regime.

Having said that, it will be necessary to see what personal information may be affected and to assess, in accordance with the criteria provided for in articles 23 and 24 of the LTC, the limitations that may arise in terms of the right to data protection of the affected people. All this taking into account the rules and principles of the regulations governing this right.

IV

According to article 23 of the LTC:: "requests for access to public information must be denied if the information sought contains specially protected personal data, such as those relating to ideology, trade union membership, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the person affected expressly consents to it in writing that must accompany the request."

The LTC excludes third-party access to any information deserving of special protection, a criterion that also applies to information that is officially published on the transparency portal.

It should be clarified that the Commission is made up of members from different political groups, and information about their affiliation to a specific political group or that of any other councilor who may appear identified in the minutes is information about their ideology.

Article 9 RGDP generally prohibits the processing of what it considers special categories of data by establishing that 1. The processing of personal data that reveals or racial philosophical convictions, or the trade union affiliation, and the processing of genetic data, biometric data aimed at uniquely identifying a natural person, data relating to health or data relating to a natural person's sexual life or sexual orientation."

However, this prohibition would not be applicable if any of the cases provided for in section 2 (letters a) aj)) of the same precept occur. In particular, the prohibition to process the data would not be applicable when the processing refers to personal data that the interested party has made manifestly public (art.9.2.e) RGD).

Article 15.1 of State Law 19/2013 contemplates this exception by providing that "If the requested information contained specially protected data referred to in Section 2 of Article 7 of Organic Law 15/1999, of December 13, of Personal Data Protection, access can only be authorized if

count with the express and written consent of the affected person, unless said affected person had made the data manifestly public before access was requested.”

In this case, it would be about disclosing information about the membership of the elected members of the corporation to a certain political group. From the moment when these people attached to a political party, participate in the elections, freely decide to make their political ideology manifestly public and therefore the disclosure of information about the political group to which they belong would be justified under the protection of the articles 6.1

Beyond this type of information and taking into account the functions assigned to this Commission, it does not appear that the minutes may contain other personal data of this nature, but in the event that this is the case, it will be necessary to limit its disclosure.

v

Regarding the rest of personal information, article 24 of the LTC provides:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights.

2. If it is other information that contains personal data not included in article 23 (specially protected data), access to the information can be given, with the previous reasoned weighting of the public interest in disclosure and rights of the affected people. 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. (...).”

Section 1 of this precept refers to merely identifying data related to the organization, operation or public activity of the Administration. This includes the identification data of public employees who take part in the actions due to their functions, and whenever it is data that is strictly necessary for the exercise of these functions.

In this case, the identification data (name and surname and political group to which they belong) of the elected members who are part of the Commission, as well as any councilor who, in accordance with Act 1/2015 establishing the Commission may have attended as a participant.

Also included would be the identification data of public employees (name and surname and position) who may have attended as participants in the session to deal with a matter of their powers. In this case, the representative of the Personnel Board, the representative of the company committee, the auditor or the person to whom he delegates, the head of hiring, or any other public employee of the corporation who may attend are considered included in the session to deal with a specific matter, in accordance with Act 1/2015 establishing the Commission. The same must be said regarding the participation in the session of a person designated by the UDL who works on transparency issues, to the extent that this person is an employee of the Public University.

In principle, article 24.1 of the LTC would enable the publication of this data unless some special circumstance requires the protection of the specific person affected. It should be borne in mind that the dissemination of data on the electronic headquarters and on the websites of the obliged subjects, that is to say on the Internet, without any type of access restriction, entails, from the point of view of data protection, a much more direct impact on the right to privacy of these people. In this regard, the City Council will need to assess whether there are concrete personal circumstances that make it advisable to omit the identification data of any of the public employees that appear in the minutes.

VI

With regard to the rest of personal information, article 24.2 of the LTC requires a balance to be made between the public interest in its disclosure and the rights and interests of the persons affected.

Act 1/2015 of the constitution of the Special Transparency Commission, indicates as possible participants, the person designated by the neighborhood associations, a representative of the College of Journalists, or other people who may have participated in a specific session depending on the content of the agenda.

In principle, these would be people who act on behalf of various legal entities. Considering that what may be of interest for purposes of transparency of public activity is to know which entities have participated and what is the position adopted by these entities in a specific matter, it does not seem necessary to disclose the names and surnames of their representatives

The principle of data minimization contained in article 5.1.c) RGPD requires that only data that are appropriate, relevant and limited in relation to the purpose for which they are processed are processed, and not being in this case relevant to the identity of the person representing the participating entities, it would be advisable to omit the name and surname of these persons. This does not prevent the possible indirect identification of these people but offers a less intrusive option for their privacy.

Beyond the information about those attending the meetings, third physical persons may be cited in the proceedings (legal persons are outside the scope of application of the RGPD). Regarding these people and without prejudice to the need to assess each specific case, the following reflections can be made.

The municipal charter attributes to the Commission the functions of control and publicity in matters of transparency of public accounts, contracting and concessions of public services, as well as other issues brought to the attention of the members of the Commission.

Article 13.1 d) of the LTC provides that signed contracts, including minors, with the indication of the object, the amount of the tender and award, and the identity of the successful tenderer (whether natural person) are made public or legal). To the extent that the minutes contain information related to the contracting or granting of public services that must already be published on the corporate website, the disclosure of this information contained in the minutes should not imply a greater interference with privacy of the affected awardee.

In a similar vein, article 15 b) of the LTC foresees that the subsidies and grants awarded are public, with an indication of the amount, the object and the beneficiary, except in cases where these subsidies and grants are have granted for reasons of social vulnerability, in which the identity of the beneficiaries must be preserved. To the extent that the minutes contain information referring to aid and subsidies that must already be published on the corporate website, the disclosure of this information contained in the minutes should not imply a greater interference with the privacy of the beneficiaries .

Beyond this information and in the event that third-party natural persons - other than the awardees of the contracts or the beneficiaries of subsidies - are mentioned, related to the specific matters being discussed (in the case of this commission, other issues can be discussed that brought to the attention of the members of the Commission), it is necessary to take into account the specific purpose that would motivate the publication for the purposes of transparency of public activity.

In this sense, the publication of the information should aim for the public to be able to know the deliberations and the meaning of the votes cast by the various local elected officials in relation to matters related precisely to the fulfillment by the corporation of the obligations of transparency imposed by the LTC itself. This would allow citizens to form a critical opinion on what the position of the different political groups is regarding the monitoring and control of the fulfillment of these obligations by the Corporation.

As has been pointed out, the disclosure of personal information via the Internet, available to everyone, means from the point of view of data protection, a much more direct impact on the right to privacy of these people. Bearing this in mind, in accordance with the information provided in the consultation and given that it does not seem to be strictly necessary to achieve the purpose of transparency the disclosure of their identity, it would be advisable to omit any information that makes it possible to identify these people

Conclusions

Data protection regulations would not prevent the publication of merely identifying data (name and surname and position or political group) of elected members or public employees who attend or intervene as members or participants in the sessions of the

Special Commission for Transparency and which are contained in the respective acts that are raised, if the matters subject to deliberation and voting are considered to be of public interest, unless there is a specific personal circumstance that advises their omission.

Article 23 of the LTC prevents the publication of any other information deserving of special protection that these acts may contain. The publication of the rest of personal information about third parties identified in the minutes requires a prior weighting between the different rights and interests in the terms set out in this opinion.

Barcelona, December 11, 2018

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