

Opinion in relation to a consultation on the publication of contracts and agreements for purposes of transparency in administrative management

A letter from a public sector entity of the Generalitat de Catalunya is presented to the Catalan Data Protection Authority on the publication of contracts and agreements for purposes of transparency in administrative management and their compliance with data protection regulations personal data.

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The entity states, in its letter of inquiry, that, as an entity of the public sector of the Generalitat de Catalunya and in order to comply with the active advertising obligations established in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC), must publish :

- a) The agreements, in the Register of collaboration and cooperation agreements of the Generalitat of Catalonia.

In this sense, it states that the document of the agreement is sent in CSV format to the person responsible for the Registry and that the transmission is carried out in the form of an authentic copy, which incorporates various personal data.

- b) Administrative contracts, on the Public Procurement Electronic Platform (PECP).

In this regard, it states that the said PECP is fed by the Public Procurement Services Platform (PSCP), where the entity processes the original contracts signed electronically, which contain various personal data.

In view of the personal information that these documents could contain, the entity considers, in particular, which personal data could be excessive for transparency purposes and which solution would need to be implemented, if applicable, to comply with the LTC and, at the same time, respect the right to data protection of those who may be affected.

On the other hand, the entity also acknowledges that they have doubts related to the electronic signature contained in the administrative acts adopted by the executive director of the entity due to his position.

In this sense, it raises whether all the data contained in said electronic signature (name, surname, ID, high level of signature, entity, position and date) must be visible or accessible, taking into account that the administrative acts in that the electronic signature is incorporated are published on different platforms for the purposes of notification to third parties.

We refer to these issues in the following sections of this opinion.

III

The consultation raises, first of all, what should be the scope of the publication, for transparency purposes, of administrative collaboration agreements and administrative contracts, specifically, which personal data should be omitted from these documents in order to comply with personal data protection regulations.

In accordance with article 4.1) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), fully applicable from the last 25 May (Article 99 RGPD), means 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".

Therefore, it is necessary to bear in mind, at the outset, that the information relating to legal entities that may be contained in contracts or collaboration agreements will remain outside the scope of protection granted by the legislation on data protection personal. Consequently, there would be no impediments, from the perspective of data protection, for this type of information to be published.

With regard to that information that is considered personal data, when referring to natural persons (including individual entrepreneurs and liberal professionals), please note that the RGPD requires that its treatment, understood 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 or modification, extraction, consultation, use, communication by transmission, **dissemination** or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction", is adapted, among others, to the principle of data minimization.

In accordance with this principle, regulated in article 5.1.c) of the RGPD:

"1. The personal data will be: (...)
c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("minimization of data"); (...)".

Respect for this principle of data minimization, in fact, is also apparent from the transparency legislation itself, establishing that "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 personal data" (article 7.1 LTC).

Consequently, it is necessary to ensure that only the personal data included in the contracts and administrative agreements subject to publication are disseminated that are strictly necessary to achieve the intended purpose in each case.

IV

According to its article 1.2, the LTC aims to "establish a system of relations between people and the public administration and other obliged subjects, based on the knowledge of public activity, the incentive of participation citizens, the improvement of the quality of public information and administrative management and the guarantee of accountability and responsibility in public management".

For this purpose, the LTC expressly foresees the obligation to publicize certain public information on the electronic offices and websites of the obliged subjects or on the Transparency Portal (articles 5 and 8).

Specifically, in matters of public procurement, article 13 of the LTC provides that:

"1. Transparency in the area of contracts entered into by obligated parties is applicable to all contracts, including patrimonial and minor contracts. **The public information relating to contracts must include:** (...) d) **The contracts signed, with the indication of the object, the tender and award amount, the procedure used to contract and the identity of the successful tenderer**, the duration, the number of tenderers, the award criteria, the comparative table of offers and the respective scores, and also the agreements and technical reports of the procurement process. This information must be up-to-date and refer to at least the last five years. (...)."

Since the present inquiry focuses on the publication of the original contracts, it must be said that from this precept of the LTC it is inferred that the obligation of the obliged subjects (in this case, the entity) in this context would be seen completed with the publication of a list of all the contracts signed with the indication of certain information about it. In other words, it would not be required to publish the full text. This, in addition to publishing other documentation related to these contracts (such as agreements and technical reports of the procurement process).

As indicated in the consultation letter, personal data could appear in the contracts, the disclosure of which would be unnecessary, in such a way that the full publication of the same would lead to a communication of data to third parties that is not justified from the point of view of the purpose pursued by the rule.

In this sense, and for the purposes of article 5.1.c) of the RGPD, mentioned above, it must be said that it is the LTC itself that establishes the minimum content that must be disseminated to achieve the intended purpose with the publication of information about the contracts, limited, in the case of personal data, to the dissemination of the "identity of the successful tenderer".

On the other hand, it should be borne in mind that, with this same purpose of transparency in matters of public procurement, article 63 of Law 9/2017, of November 8, on public sector contracts, by which they are transposed to the Spanish legal system Directives of the European Parliament and of the Council 2014/23/UE and 2014/24/UE, of February 26, 2014 (hereinafter, LCSP), also establish the obligation of contracting bodies to disseminate their profile through Internet, in which it must be published, among other information:

"3. In the case of **information relating to contracts**, at least the following information must be published: (...)

e) The number and **identity of the bidders participating in the procedure**, as well as all the minutes of the procurement board relating to the award procedure or, in the case of the board not acting, the resolutions of the corresponding procurement service or body, the assessment report of the quantifiable award criteria by means of a value judgment of each of the offers, where appropriate, the reports on the offers incurred in the presumption of abnormality referred to in article 149.4 and, in any case, the contract award resolution.

Likewise, the decision not to award or conclude the contract, the withdrawal of the award procedure, the declaration of desertion, as well as the interposition of resources and the eventual suspension of contracts due to the interposition will also be subject to publication in the contractor's profile of resources.

4. The publication of information relating to minor contracts must be carried out at least quarterly. The information to be published for this type of contract will be, at least, its object, duration, the award amount, including Value Added Tax, and the **identity of the awardee**, ordering the contracts by the identity of the awardee.

Those contracts whose estimated value was less than five thousand euros are exempt from the publication referred to in the previous paragraph, as long as the payment system used by the adjudicators was the cash advance or another similar system to realize lower payments (...)."

It would seem to be inferred from this precept of the LCSP that, in this case, to achieve the intended purpose of transparency, it would also not be required to disseminate the contracts in the profile of the contractor, but rather certain information about it.

Now, in view of the provisions of article 154.1 of the LCSP itself, it seems that said publication would indeed be required. Specifically, this article, relating to the announcement of formalization of contracts, states that:

"1. The formalization of the contracts must be published, **together with the corresponding contract**, no later than fifteen days after the completion of the contract **in the contractor profile of** the contracting body. When the contract is subject to harmonized regulation, the notice of formalization must also be published in the "Official Journal of the European Union". (...)."

From the joint reading of both precepts of the LCSP, however, it could be said, for the purposes of article 5.1.c) of the RGPD, that the scope of the dissemination of personal data that may contain the contracts should also be limited in this case to the "identity of the successful tenderer".

On the other hand, the LCSP provides, in its article 346.3, that:

"3. The awarding powers will communicate to the Public Sector Contracts Register, for registration, **the basic data of the contracts** awarded by them, **including the identity of the awardee**, the award amount thereof, together with the corresponding breakdown of the Tax on the Added Value. (...)."

Taking into account that the aforementioned Register of public sector contracts is accessible from the Transparency Portal (DA 8a LTC), it is understood, in view of this precept of the LCSP, that, in this case, the that would be required would be to publish the "basic data" of the contracts, among them, the "identity of the successful bidder".

Given this, it can be said that, in the context of public procurement, the publication of the identity of the people who have been successful - even that of the other bidders for a public contract - becomes essential in terms of transparency, given that otherwise it would not be possible to effectively control the contract award process and, therefore, the management of public resources. And this regardless of whether they are legal entities or natural persons. In fact, being natural persons, it must be taken into account that this would, in any case, be information related to their economic or professional sphere, as tenderers or awardees of contracts tendered by the entity.

Being clear, therefore, the need for the publication of this information to achieve the purpose of transparency intended by both the LTC and the LCSP, the main question focuses, from the point of view of data minimization, in determining which data are related to the "identity" of these awardees that could be the subject of dissemination for that purpose.

And, in this sense, it is understood that it would be sufficient to publish their first and last names, without adding any other identifying information (the LCSP itself serves as an example, which, when providing for the publication of the decision to award the contract in the profile of the contractor (article 151), it only requires the publication of the name of the successful tenderer (section 2.c)).

That is to say, the publication of the DNI number, NIF or equivalent identification document of the affected persons, for the purposes of transparency, would be unnecessary and, therefore, contrary to the principle of minimization. And this because providing this data to the public (recipients of the information that must be published in compliance with the duties of transparency), who in principle do not know it in advance, does not provide any additional element when it comes to identifying the awardees (or bidders) of a public contract by the general public (this objective is also achieved with the knowledge of their first and last names). On the contrary, it can lead to serious damage for the people affected, in case of subsequent misuse of this data by third parties (it must be borne in mind that, although it is not a recommended practice, often the DNI number/ NIF is used as an identification mechanism to access certain applications or certain services).

This Authority has come to state (see, among others, CNS 4/2018 or CNS 56/2017, available on the website <http://apdc.cat/gencat.cat/>) that this type of publication of identifying data (joint dissemination of the name, surnames and DNI/NIF) could only be justified for the purposes of achieving the purpose of notification of administrative acts to the persons interested in the yes of certain administrative procedures, although in case of coincidence of names and surnames between interested parties and limited to the last four digits of the DNI/NIF number.

Regarding this, the recent Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (BOE no. 294, of December 6, 2018), establishes that:

"Seventh additional provision. Identification of those interested in notifications through announcements and publications of administrative acts.

1. When it is necessary to publish an administrative act that contains personal data of the affected person, **he will identify himself by means of his name and surname, adding four random numerical digits from the national identity document**, foreigner's identity number, passport or equivalent document. When the publication refers to a plurality of those affected, these random figures must be alternated.

When it comes to notification through announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, the affected person will be identified exclusively through the full number of your national identity document, foreign identity number, passport or equivalent document.

When the affected person lacks any of the documents mentioned in the two previous paragraphs, the affected person will be identified solely by means of their number and last name. **In no case should the number and surname be published together with the full number of the national identity document, foreign identity number, passport or equivalent document.**

(...).”

In light of this provision, therefore, it is clear that in no case should the name, surname and full number of the DNI or equivalent document of those affected (in the present case, of the awardees of the contracts) be published together or, as the case may be, of the person acting on their behalf).

v

Having said that, in the contracts (as well as in other documentation related to the procurement process and which must be published, such as, for example, the award decision), in addition to including the identity of the awardee, it will also include the personal information of the public employee who intervenes because of his position.

Bearing in mind that the objective of transparency is to make known to the citizen information relating to the activity of the administration in all the areas in which it intervenes or, in other words, that the citizen can know what the administration is doing, how he does it, who does it and on what basis he does it, it is understood that, in this context, it is relevant that the citizen can identify the person who, in the exercise of their functions, has intervened in a file, procedure or procedure.

In fact, the LTC itself foresees, in general, that the citizen can be provided with the "merely identifying" data of the people who have intervened in files due to their functions, as long as it is data that is related to the organization, operation or public activity of the Administration and are strictly necessary for the exercise of these functions (Article 24.1)).

On the other hand, it should be borne in mind that Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPACAP), recognizes the right of those interested to identify the authorities and staff at the service of the administrations public bodies under whose responsibility the procedures are processed (article 53.1.b)).

In view of this, and for the purposes of facilitating this "identification" of the civil servant or public employee, it is understood that it would be sufficient, in this case, to provide their name and surname, information that could be completed with the indication of their position or position of work and the administration or entity to which it belongs. This, without prejudice to the fact that there may be some specific case in which, finding the public employee in question in a particularly vulnerable situation, it may be inadvisable to reveal the place where he works and the position he holds.

Therefore, it should be borne in mind that the disclosure of other personal identifying data of public employees that may be contained in the contract (or other related documentation), such as their DNI or handwritten signature, would be contrary to the principle of data minimization, as it is data that is not strictly necessary to be able to carry out this identification.

VI

These considerations can be extended with regard to the publication of administrative collaboration agreements for transparency purposes.

Article 14 of the LTC provides that:

"1. Transparency in the field of collaboration agreements is applicable to all agreements and management tasks signed between the obliged subjects and private and public persons.

2. The public information relating to collaboration agreements must include, at least: a) **The list of current agreements, indicating the date, the parties that sign them,** the object, the rights and the obligations of any kind that they generate and the period of validity. b) Any changes to any of the parameters referred to in letter a, and the date and manner in which they occurred. c) The information relating to the compliance and execution of the agreements.

3. The advertising obligations established by this article must be made effective by means of the Registry of collaboration and cooperation agreements of the Generalitat, which must be integrated into the Transparency Portal."

As can be seen from this article, the obligation of transparency of the actions of the entities subject to the LTC in this context would be fulfilled with the dissemination of a list of all the collaboration agreements in force. In other words, it would not be required to disseminate the entire text.

As in the previous case, it must be borne in mind that personal data could appear in the collaboration agreements, the disclosure of which would be unnecessary or not justified from the point of view of the purpose pursued with the rule.

In this sense, it is the LTC itself that establishes the minimum content that must be disseminated, limiting it, in terms of personal data, to information about "the parties that sign them", which, in effects of article 5.1.c) of the RGPD, it should cover only the identification of the people who act on behalf of these parties. Therefore, also in this case, only their name, surname, position and entity to which they belong should be provided.

VII

Having said that, and given that the consultation letter expressly states what measures should be taken to comply with the RGPD, it is considered pertinent to make the following considerations.

In accordance with the statements made in its letter of inquiry, the entity sends, in order for them to be published, the original contracts to the PSCP, as well as the collaboration agreements to the Register of collaboration and cooperation agreements of the Generalitat.

In view of the considerations made throughout this report, it would be necessary that, prior to its dissemination through these platforms, any personal data other than identifying data should be removed from the text of contracts and agreements of, as the case may be, the awardees or signatories. Likewise, with respect to these identifying data, it would be necessary to remove those data other than your first and last name and, where appropriate, position (that is, the number of DNI, NIE or equivalent document or the handwritten signature).

Recommendation that is also aimed at the publication of any other documentation related to the contracts that must be disseminated in attention to the forecasts of the LTC and the LCSP.

Likewise, it would be advisable to expressly state this circumstance on the aforementioned websites or platforms, as well as that the original signed documentation is available so that it can be consulted.

In the case of electronically signed documents, given that a specific question is raised in the consultation letter, we refer to the considerations that follow.

VIII

In the consultation, it is considered, in relation to the administrative acts that the executive director of the entity signs electronically due to his position, whether all the data included in their electronic signature must be visible or accessible by third parties, bearing in mind consider the dissemination that can be done.

Article 43 of Law 40/2015, of 1 October, on the legal regime of the public sector, relating to the electronic signature of staff working for Public Administrations, establishes that:

- "1. Without prejudice to the provisions of articles 38, 41 and 42, the action of a Public Administration, organ, public organism or entity of public law, when it uses electronic media, will be carried out by means of an electronic signature of the holder of the organ or public employee.
2. Each Public Administration will determine the electronic signature systems that must be used by its personnel, which will be able **to jointly identify the holder of the job or position and the Administration or body in which it provides its services**. For reasons of public security, electronic signature systems may refer only to the public employee's professional identification number."

This precept establishes that all administrative action, when electronic means are used, will be carried out by electronic signature of the public worker. In this sense, it provides that the electronic signature systems used by public workers may, in general, jointly "identify" the holder of the workplace and the Administration or body in which they provide their services.

This identification of the public worker is related to the right of those interested to identify the authorities and staff in the service of the public administrations under whose responsibility the procedures are processed, which is recognized by article 53.1.b) of the LPACAP, already mentioned

As this Authority has decided on previous occasions (among others, in opinions CNS 9/2017, CNS 17/2017 or CNS 23/2017, available on the website <http://apdcat.gencat.cat/>), the way in which this identification is carried out may vary depending on the type of contact that occurs with the citizen, its duration and the way in which the functions specific to each workplace must be carried out.

Thus, when trying to identify the public worker who signs a certain administrative document, it would be sufficient, by application of the minimization principle, to provide his name, surname and position, given that this is the minimum necessary personal information required by the citizen to know the identity of the person who served him in his performance before the Public Administration (in this case, before the entity).

Knowing other identification data of the public worker (such as his ID card) would not contribute or improve the identification of the worker, given that the citizen does not have the appropriate means to check the veracity of this personal information.

As has been made clear in the opinion CNS 17/2017 (to which we refer, in case you want to have more information on this issue), this same action by public workers (signing the relevant documents) transferred to the field of electronic administration must not detract from their fundamental right to the protection of personal data (Article 18.4 CE).

Having said that, the truth is that when a certain document is signed electronically using the public worker certificate issued by a certification body, certain personal information of this worker is "visible" in the signature image that is generated in the document.

The entity points out, in this sense, that the first name, surname, ID and position data are visible, apart from those relating to the entity, date and time of signature.

It must be borne in mind, at the outset, that the appearance or image of a signature based on a certificate is something that can be pre-defined a priori through the options offered in this regard by the program used to sign electronically (for example, Adobe Acrobat), so the public worker data that is embedded in the electronic certificate does not necessarily have to be visible once the document has been electronically signed (certain data could be removed). The visibility or not of this personal data will depend, therefore, on the way in which the format of said signature has been pre-established.

For this reason, in the event of publishing electronically signed documents, it would be advisable, in order to avoid the dissemination of excessive data, to modify the format of the public worker's signature. In this sense, and for the purposes of article 5.1.c) of the RGPD, the chosen format should only allow the name, surname and position to be "visible".

That said, it should be noted that changing the format of the signature image does not actually prevent "access" to the signer's personal information that is included in the configuration of their public worker certificate. This information - which could only be modified by the certification service provider - is accessible through the consultation of the signature properties (you can see, in fact, all the information fields that are part of the structure of the certificate).

For this reason, if you want to publish the document in such a way that the electronic signature is visible, it would be advisable to publish the document in question in image format (for example, after having scanned it), so that the certificate properties would no longer be accessible.

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

In the publication of contracts as a result of compliance with the transparency obligations established in the field of public procurement, the dissemination of personal data should cover only the name and surnames of the awardees, as well as the name, surnames and

charge of the public worker who intervenes by reason of the charge, this being the minimum information necessary to achieve the intended purpose (Article 5.1.c) RGPD).

In the case of collaboration agreements, the publication of personal data should be limited to the name, surname and position of the persons acting on behalf of the signatory parties.

In order to avoid the dissemination of unnecessary personal data in the publication of this type of document, it is recommended to take into account the observations made in sections VII and VIII of this opinion.

Barcelona, December 11, 2018

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