

CNS 6/2019

Opinion in relation to the consultation of a City Council on the processing of data of people reporting traffic violations

A letter from the data protection delegate of a City Council is presented to the Catalan Data Protection Authority regarding the communication of data from persons reporting traffic violations to the reported person, taking into account the regulatory provisions in the matter traffic and personal data protection regulations.

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

I

(...)

II

The inquiry states that the Traffic Sanctioning Regulation, the movement of motor vehicles and road safety (approved by Royal Decree 320/1994), provides for the communication of data from the reporting person to the reported person.

Taking this into account, the query asks if the communication to the reported person of the reporting person's data, which is specifically provided for in a standard of regulatory rank (article 7.c) of R. decree 320/1994), is a lawful treatment in accordance with the personal data protection regulations (article 6.1 of the General Data Protection Regulation and article 8 of Organic Law 3/2018).

The inquiry asks whether, in the event that the communication of data is considered lawful, the right of opposition should be recognized to the reporting person, so that their identifying data is not communicated to the reported person.

The consultation is located in these terms, according to article 4.1 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection Regulation (RGPD), it is personal data: any 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; (art. 4.1 RGPD).

It is also necessary to take into account Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), in force since December 7, 2018.

The processing of personal data (art. 4.2 RGPD), in particular, the communication of the identity of the person reporting a traffic violation to the reported person, is subject to the principles and guarantees of the personal data protection regulations (RGPD and LOPDGDD).

The processing of personal data must comply with the principle of legality (Article 6 RGPD), according to which:

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

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

2. Member States may maintain or introduce more specific provisions in order to adapt the application of the rules of this Regulation with respect to treatment in compliance with paragraph 1, letters c) and e), setting more precisely specific treatment requirements and other measures that guarantee legal and equitable treatment, including other specific situations of treatment pursuant to Chapter IX.

(...)"

Therefore, in the absence of the consent of the reporting person (art. 6.1.a) RGPD), in order for their data to be communicated to the person reported for an infringement of the traffic regulations, it will be necessary to have another enabling legal basis that allows the communication of the data subject to consultation to be considered lawful

With regard to the exercise of sanctioning authority in traffic matters by the different Public Administrations with competence in this area (art. 84 Traffic Law, approved by Royal Legislative Decree 6/2015, of October 30 and , with regard to Catalonia, article 164.1.c) EAC), article 86 of the Traffic Law provides the following:

"1. The sanctioning procedure will be initiated ex officio by the competent authority that has knowledge of the facts that may constitute offenses classified in this law, on its own initiative or by means of a complaint by the agents of the authority in charge of traffic surveillance in the exercise of their functions that have orders or from anyone who has knowledge of the facts.

2. Nevertheless, the complaint made by the agents of the authority in charge of traffic surveillance in the exercise of the functions entrusted to them, and notified in the act to the person complained of, constitutes the act of initiation of the sanctioning procedure, to all effects."

Given the powers of the Public Administration in matters of traffic, including the exercise of sanctioning powers, the enabling basis for the processing of personal data in the case at hand could be found in section e) of the article 6.1 of the RGPD, which enables the treatment that is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers by a public authority.

Thus, according to article 6.3 of the RGPD:

"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 responsible for the treatment. (...)"

Recital 41 of the RGPD provides that "when the present Regulation makes reference to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament". The same recital states that this is "without prejudice to the requirements in accordance with the constitutional order of the Member State in question".

Given the differences between the various legal systems of the countries of the Union, the RGPD does not establish the form of the legal rule that provides for a certain treatment, but refers to the requirements derived from each constitutional right.

In the case of the Spanish State, with regard to the reference to the legal basis in relation to the law of the Union or of the Member States (art. 6.3 RGPD), the rule of development, as it is a fundamental right, must have the status of law, given the requirements derived from Article 53 CE.

In relation to the processing of data due to legal obligation, public interest or exercise of public powers (art. 6.1, paras c) and i) RGPD), article 8 of the LOPDGGD, to which the query refers, provides the following :

"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 this is provided for 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 the treatment, such as the adoption of measures

security additions 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.”

Article 8.2 of the LOPDGDD, requires that the competence that justifies and legitimizes the processing of data is provided for in a rule with the rank of law. As can be seen from this provision, and unlike what is established in section 1, it is not necessary that the treatment - in this case, the communication of data from the person reporting traffic violations to the reported person - is planned or specified in a rule with legal status.

In the case we are dealing with, the processing of data subject to consultation derives from powers attributed by rules with the rank of law (Traffic Law) to the Public Administration, specifically, powers in the exercise of sanctioning powers in traffic matters, which are carried out by different Public Administrations.

In the case we are dealing with, it must be borne in mind that according to the regulatory framework, the Town Councils have powers in traffic matters.

According to the provisions of article 25 of Law 7/1985, of April 2, on Local Government Bases (LBRL)

"1. The Municipality, for the management of its interests and within the scope of its competences, can promote activities and provide public services that contribute to satisfying the needs and aspirations of the neighborhood community in the terms provided for in this article.

2. The Municipality will in any case exercise its own powers, in accordance with the legislation of the State and of the Autonomous Communities, in the following matters:

(...)

g) Traffic, vehicle parking and mobility. Urban collective transport.

(...).”

According to article 66 of Legislative Decree 2/2003, of April 28, which approves the Revised text of the Municipal and Local Regime Law of Catalonia, in its third section:

"3 The municipality has its own competences in the following matters: (...) b) The organization of the traffic of vehicles and people on urban roads. (...).”

To this it should be added that the collection and processing of data of the reporting person is provided for in regulations with the rank of law.

Thus, article 87 of the Traffic Law provides the following:

"1. The agents of the authority in charge of traffic surveillance in the exercise of the functions they have entrusted must report the infractions they observe when they exercise functions of that nature.

2. Complaints for traffic offenses must include, in any case: a) The identification of the vehicle with which the alleged offense was committed. b) The identity of the accused, if known. c) A succinct description of the event, with the location or section, date and time. d) The number, surname and address of the complainant or, if he is an agent of the authority, his professional identification number."

Article 5 of Royal Decree 320/1994 provides that:

"Denunciations for traffic offenses must include: the identification of the vehicle with which the alleged infraction was committed, the identity of the person reported, if known, a detailed account of the incident, with an expression of the place, date and time and the number, profession and domicile of the complainant. When this is an agent of the authority, these data may be replaced by his identification number (...)."

In relation to the complaints made by individuals, to which the consultation refers (art. 4.2 R. decree 320/1994), article 7 of R. decree 320/1994, provides that:

"a) The complaint may be made verbally to the traffic enforcement agents closest to the scene of the incident, or in writing addressed to the Traffic Chief or the City Hall of the place of the infraction, depending on whether one or the other has the competence to instruct the expedient b) The data and circumstances set out in article 5 of this Regulation will be stated in the complaint. c) If the complaint is presented to the traffic enforcement agents, they will formalize the regulatory complaint report, in which it will be stated, in addition to the requirements set forth in the previous section, whether or not they personally verified the reported violation , as well as the number and address of the particular complainant, sending the bulletin to the competent Traffic Department or Mayor for processing, without prejudice to delivering a duplicate to the complainant if possible."

For the purposes of article 8 of the LOPDGDD, the competence from which the data processing derives is provided for in rules with the rank of law. Not only that, but the provision that in complaints related to vehicle traffic there must necessarily be ("in any case") certain personal data of the person making the complaint is also included in a rule with the rank of law (art. 87.2.d) Traffic Law).

Therefore, for the purposes of article 6.1 of the RGPD and article 8 of the LOPDGDD, it can be considered that the processing of personal data of the reporting person is lawful, and that said processing has a sufficient legal basis (art. 6.1.e) RGPD), given that the treatment itself is provided for in rules with legal scope.

This, without prejudice to the necessary compliance with the rest of the principles and guarantees of the personal data protection regulations (RGPD and LOPDGDD).

III

As the consultation points out, the applicable regulations provide that a duplicate of the complaint made by an individual can be delivered to the person complained of, which will contain the identifying information of the complainant (art. 7.c) R. decree 320/1994).

It should be borne in mind that one of the purposes that could justify access to the information of the complaint by the person reported is that the information is necessary to exercise their rights, specifically, their right of defence.

From this point of view, there would be no doubt that, in principle, the person reported in a file must be able to know, unless some legally provided exception applies, the identity of the reporting persons in a procedure that affects them. And with all the more reason it must be so when, in view of the procedure that follows the complaint, this constitutes the means of proof on which it is intended to base the imposition of the penalty. Thus, knowing the identity (name and surname) of the person reporting can be a clearly relevant element when exercising the right of defence, subjecting the evidence provided to the principle of contradiction and making an appropriate assessment and in the case to be able to take the appropriate actions in the face of false allegations.

Law 39/2015, of October 1, on the common administrative procedure of public administrations, provides that persons interested in an administrative procedure have, among others, the right: "To know, at any time, the 'status of the processing of the procedures in which they have the status of interested parties; the meaning of the corresponding administrative silence, in case the Administration does not dictate or notify an express resolution within the deadline; the competent body for its instruction, if applicable, and the resolution; and the procedural acts dictated. Likewise, they also have the right to access and obtain a copy of the documents contained in the aforementioned procedure (article 53.1.a) Law 39/2015).

In the same vein, article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, provides that: "Citizens who have the status of persons interested in a administrative procedure in progress have the right to access the file and obtain a copy of the documents that are part of it. If the documents are in electronic format, citizens have the right to obtain electronic copies."

Therefore, in addition to the provisions of the Traffic Law, it must be taken into account that according to the applicable legal regulations (Law 39/2015 and Law 26/2010), the person interested in an administrative procedure (in the case at hand , the person reported for a traffic infraction) must be able to have access to the documents in the corresponding file, for the purposes that are relevant, have access to a copy of the corresponding report

On the other hand, from the perspective of the protection of personal data, it is necessary to take into account the configuration of the right of access to one's own personal data (art. 15 RGPD and art. 13 LOPDGDD). According to article 15 of the RGPD:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

a) the purposes of the treatment; b) the categories of personal data in question; c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;

d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period; e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment; f) the right to present a claim before a control authority; g) when the personal data has not been obtained from the interested party, any available information about its origin; h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the person concerned."

In the event that, where appropriate, the person reported for a traffic violation exercises his right of access before the corresponding public administration, it must be taken into account that this right of access to his own personal data also includes the right to know the origin of the data subjected to treatment and, therefore, the identity of the reporting person (art. 15.1.g) RGPD).

This Authority has made this clear, among others, in Reports IAI 50/2017 and IAI 54/2018, which can be consulted on the website www.apd.cat.

From this perspective, and in line with the previous considerations, it can be considered lawful, for the purposes of data protection regulations, for the person reported for a traffic violation to know the identity (name and surname) of the reporting person .

For all that has been said, the applicable regulatory framework provides that the identity (name and surname) of the reporting person can be known by the reported person, not only based on the provisions of the traffic regulations (Traffic Law and R. decree 320/1994), and to the administrative procedure (Law 39/2015 and Law 26/2010), but also by application of the provisions relating to the right of access (art. 15 RGPD), in case the person reported exercises this right

IV

However, having said that, the applicable regulations provide that the complaint must contain the address of the complainant (art. 87.2.d) Traffic Law and art. 5 R. decree 320/1994), and even, as mentioned in the complaint, it is foreseen that the profession of the complainant must be recorded in the complaint (art. 5 R. decree 320/1994).

Without prejudice to the considerations that have been made regarding the legal basis of the data processing of the reporting person, from the perspective of the principle of minimization (art. 5.1.c) RGPD), according to which the personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are treated, it does not seem necessary for the person reported to know the profession and address of the person making the report.

Although, as has been said, knowing the identity (name and surname) of the person making the complaint may have sufficient legal authority and basis in the aforementioned legal regulations, knowledge of the domicile data (and, with more reason, of the profession) of the reporting person, does not seem relevant to the exercise of the right of defense of the interested party (the reported person).

Thus, unless the person making the complaint is an agent of the authority in the exercise of his functions (art. 4.a) and 6 of R. decree 320/1994), in the event that the

reporting person is a private person (art. 4.b) and 7 R. decree 320/1994), the data relating to the profession is not relevant.

In this sense, as this Authority has agreed in Report IAI 36/2016, regarding access to the identity of the reporting agent in a traffic disciplinary case, if the reported person needed to propose any evidence that requires to carry out the summons of the person making the complaint, the summons could be made through the City Council directly proposing it as evidence during the processing of the sanctioning procedure or, where appropriate, of the administrative appeal, or even to requirement of the judicial body in case it is proposed as evidence in an eventual contentious ad

Apart from the exercise of the right of defense by the reported person, from the perspective of the exercise of the right of access (eg art. 15 RGPD), it also does not seem necessary that, in order to know the origin of the processing of the data in the terms indicated, the reported person must know other personal information, beyond the identity (name and surname) of the complainant, such as address and profession data.

For all that has been said, from the perspective of the principle of minimization, it does not seem that, in general, the reported person should have knowledge of other personal data of the reporting person beyond knowing the identity (name and surname) of this, in particular, does not seem proportionate to the fact that it must necessarily know the address and profession of the person making the complaint.

v

The consultation asks whether the right of opposition should be recognized for the reporting person, giving them the possibility to determine that their identifying data is not communicated to the reported person.

According to article 21 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 these 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 liberties of the interested party, or for the formulation, exercise or defense of claims.

(...)."

According to article 18 of the LOPDGDD: "The right of opposition, as well as the rights related to automated individual decisions, including the creation of profiles, will be exercised in accordance with what is established, respectively, in articles 21 and 22 of Regulation (EU) 2016/679."

As has been said, the processing of data from persons reporting traffic violations would be necessary for the exercise of public powers, specifically, the competence of the Public Administration in matters of traffic management and sanctioning procedures in traffic matter (art. 6.1.e) RGPD).

Therefore, given that in relation to the treatment of data subject to consultation, the legal basis enabling the treatment would be that provided for in article 6.1.e) RGPD, in the case at hand it would be necessary to admit the exercise of the right to opposition, in relation to the processing of data subject to consultation, given the provisions of article 21 of the RGPD.

In particular, the exercise of the right of opposition could consist, where appropriate, in the request that certain personal data of the reporting person contained in the report, are not communicated to the reported person.

Having said that, it should be borne in mind that knowing the identity of the reporting person can be a relevant element for the exercise of the right of defense of the reported person or, where appropriate, for the latter to take certain legal actions.

In the event that, following the exercise of the right of opposition by the reporting person, the reported person cannot know the identity of that person, this could condition the probative value of the report filed in relation to the traffic violation, or affect the right of defense or other rights and interests of the person reported.

For all of this, although in the case we are dealing with, natural persons who report traffic violations must be able to exercise their right of opposition, the City Council, as responsible for data processing (art. 4.7 RGPD), will have to take into account the circumstances of each case in order to determine whether the request of the reporting person should prevail, or whether, taking into account the rights and interests of the reported person, it is appropriate to deny the request and also communicate the identity of the reporting person to the reported person.

In accordance with the considerations made in this opinion the following are made,

Conclusions

The applicable regulations allow the identity (name and surname) of the person reporting traffic violations to be communicated to the person reported, without prejudice to the possibility of the reporting person exercising the right of opposition.

From the perspective of the principle of minimization, it does not seem that, in general, the reported person should have knowledge of other personal data of the reporting person beyond knowing the identity (name and surname), specifically, the address and the profession of the reporting person.

Barcelona, February 13, 2019