

**Opinion in relation to a town council's consultation on councillors' access to municipal files relating to evictions**

A letter from a town council is presented to the Catalan Data Protection Authority, in which several issues are raised related to councillors' access to municipal files relating to evictions affecting homes within the municipal area and their adequacy to the regulations for the protection of personal data.

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

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(...)

II

The City Council states, in its letter of inquiry, that the councillors of various municipal groups have on several occasions requested access to the municipal records relating to evictions affecting homes within the municipal area.

In view of these facts, it requests the opinion of this Authority in relation to the following questions:

1. Can a councilor request information on a series of unidentified files relating to evictions from private homes, or must he first identify the file he wants to access?
2. In the case of having the right to receive said information, how should the personal data be accessed?
3. Once the identification data of the evicted people is known, could you put contact them without their prior authorization?

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

III

Law 19/2014, of December 29, on transparency, access to information and good governance (hereafter, LTC), establishes, in the second section of its first additional provision, that "access to public information in the subjects that have established a special access regime, it is regulated by their specific regulations and, additionally, by this law."

Thus, in the case at hand, in which the access of councilors to municipal records relating to evictions is considered, the provisions established by the local regime legislation, fundamentally, Law 7/1985, of 2 d April, regulating the bases of the local regime (LRBRL) and the revised Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28 (TRLMRLC), with regard to Councilors' access to municipal information.

As this Authority has done on previous occasions (among others, the IAI reports 34/2017, IAI 45/2017, IAI 23/2018 or IAI 24/2018, which can be consulted on the web

<http://apdcat.gencat.cat>), local regime legislation recognizes a right of access to all elected officials, regardless of whether they are in the government team or in the opposition, to information about provided by their local corporation and that may be necessary for the exercise of the functions that correspond to them.

Thus, article 77.1 of the LRBRL establishes that "all members of local corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the services of the Corporation and are necessary for the development of their function".

In the same sense, the TRLMRLC pronounces itself, by providing, in its article 164.1, that "all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions, in accordance with repeated jurisprudence on this issue (SSTS September 27, 2002, June 15, 2009, among others), is part of the fundamental right to political participation enshrined in article 23.1 of the Spanish Constitution, according to which "citizens have the right to participate in public affairs, directly or through representatives, freely elected in periodic elections by universal suffrage."

It should be borne in mind that the elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis, study and information of the necessary antecedents that have the services of the City Council, for their control task and to document themselves for the purposes of adopting decisions in the future (among others, STS of Ma

However, as this Authority has already recalled on several occasions, the exercise of this right of access to municipal information is in any case subject to certain conditions provided for in the TRLMRLC, cited, and in the Organization Regulations, operation and legal regime of local entities (ROF), approved by Royal Decree 2568/1986, of November 28, without prejudice to what may be established by the regulation of organization and operation of e

Article 164.2 of the TRLMRLC provides in which cases the corporation's services must provide information directly to the elected members. Outside the cases of direct access to information or documentation, article 164.3 of the TRLMRLC provides that:

"In the other cases, the request for information is understood as accepted by administrative silence if a negative resolution is not issued within four days from the date of presentation of the request. In any case, the negative resolution must be motivated, and can only be based on the following assumptions:

- a) When the knowledge or dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's image.
- b) When it comes to matters affected by the general legislation on official secrets or summary secrecy."

Access requests may be denied when any of the circumstances provided for in sections a) or) occur, but access may also be denied, given the nature of the right to data protection (STC 292/ 2000), when, regardless of whether certain data can be considered intimate or not, there are other specific circumstances related to personal data that justify it, in particular under the protection of

principle of data minimization, according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed" (article 5.1.c) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD)).

This principle implies, on the one hand, that access to municipal information that includes certain personal data, without the consent of those affected, must necessarily be linked to the exercise of the functions that correspond in each case to the councilor what it is about, in the terms provided for in the local regime legislation. On the other hand, it involves a weighting exercise, in order to assess the implications that, in each case, the exercise of the councilors' right of access to information may have for the rights of the people affected, such as the right to the protection of personal data (Article 18.4 EC).

The Authority points out, as elements to be considered when carrying out this weighting - which corresponds to the City Council, as responsible for the treatment (article 4.7) RGPD)-, the circumstances of the specific case, the personal data contained in the requested documentation, the intended purpose and the terms with which the request is made or the possible subjects affected, among others.

With regard to the specifics of the access request - an aspect to which the consultation expressly refers - it must be taken into account that the local regime legislation does not require elected officials that, in order to access the information held by the corporation, must explain or substantiate the purpose of their request, given that the reason for their request must be understood as implicit in the exercise of the functions that correspond to them as elected officials, in the terms provided for in said local regime legislation.

However, interpreting the provisions of local regime legislation and the jurisprudence of the Supreme Court, in connection with the RGPD and with the need to circumscribe access to personal data within the framework of a legitimate purpose, this Authority maintains that it could be convenient for councillors, when making the request for access to information that contains personal data, to specify the purpose for which they are requesting this access and/or the terms of their request. Especially for those cases in which the information requested may contain special categories of data (Article 9 RGPD), data included in this category with a specific regime (those relating to administrative or criminal offences), or data deserving of a special reservation or confidentiality in view of the concurrence of certain qualified circumstances (for example, situations of social vulnerability, data of minors, data related to gender violence, the possibility of drawing up socio-economic profiles, etc.).

The intended objective with this weighting is to prevent excessive or irrelevant personal data from being communicated to councilors in order to achieve the intended purpose of the access, which must necessarily be linked to the performance of the functions that correspond to them as positions elected

Therefore, although it would not be required, for the purposes of being able to assess the relevance of access to certain personal data included, in the present case, in the files relating to evictions available to the City Council, it would be advisable for the councilors to specify in relation to what purpose they request this access and also under what terms.

With regard to the advisability of identifying or not identifying said files, as questioned by the City Council, I agree that, in this case, it is not so much a matter of whether it is convenient to have this level of detail in order to assess the relevance of access to certain personal data included in these files, but that the weighting that is done will be different in each case.

Thus, in a case such as the one now being examined, in which, due to the information available, the councilors have not identified the file or files that are of interest to them, it will be necessary to carry out the aforementioned weighting having considered that generalized access to all files relating to evictions is proposed.

#### IV

The City Council proposes, in its consultation letter, how, in a case like the one proposed, access should be made to the personal data included in the information requested by the councilors, which refers to cases of evictions in the municipality

Law 24/2015, of 29 July, on urgent measures to deal with the emergency in the field of housing and energy poverty, establishes measures to avoid evictions that may produce a situation of lack of housing, not only in cases of mortgage foreclosure, but also for non-payment of rent, such as the establishment of aid to avoid evictions (article 5.5) or the obligation to rehouse the affected people (article 5.6), among others.

It must be taken into consideration that compliance with these measures corresponds to the competent public administrations, through their social services. Law 12/2007, of October 11, on social services, establishes that the purpose of social services is "to ensure the right of people to live with dignity during all stages of life by covering their basic personal needs and social needs, within the framework of social justice and people's well-being" (article 3). And it establishes as specific functions of basic social services (article 17), among others, "detecting situations of personal, family and community need in their territorial scope" (letter a)) and "intervening in family or coexistence centers in a situation of social risk, especially if there are minors" (letter g)).

In compliance with these forecasts, the actions of the town councils in this area usually include support for the affected families, which may include the search for housing alternatives or mediation with the owners, legal and social advice, the processing of financial aid for the payment of rent or rehousing in social emergency flats, among others.

Although in the case being examined there is no specific information available about the personal data included in the files regarding which the councilors request access, except for the first and last names of the people served by the social services of the City Council, it cannot be ruled out that, depending on the personal circumstances of those affected (for example, the existence of a disability) there may be specially protected data in the file of the social services, under the terms of article 9 of the RGD.

But beyond that, it must be taken into consideration that, in view of the reason for said intervention (people at risk of residential exclusion who are in the process of being evicted from their usual home or have been evicted), we are faced with information that, in any case, reveals the existence of a situation of special need. An information that, as it follows from Law 12/2007, of 11 October, on social services (article 9), is deserving of a special reservation or confidentiality.

These circumstances could act as a limit to the councilors' right of access to the information contained in the controversial files, in the event that the relevance of the specific identification of these people for the exercise of their functions is not sufficiently proven that have been attributed as elected positions.

It should be noted, at this point, that the consultation does not specify whether or not the councilors who have requested access to the files on evictions have management responsibilities in this area of municipal action.

Thus, in the case of, for example, the councilor for social services or housing, depending on how the municipal government is organized, access by him to the files on evictions in such a way that the people affected are identifiable would be justified in attention to the functions that correspond to him in this area of management.

On the contrary, in the case of a councilor who has no assigned management responsibilities in this area and in the absence of more information about the need to have the specific identification of these people for the exercise of their supervisory functions and control of municipal action, it does not appear that a generalized access to all eviction files as requested could be granted.

However, this does not mean that these councilors cannot access certain information about the evictions that have occurred in the municipality.

Thus, in accordance with the terms of your request (generalized access), the option of providing the information in an anonymized form could be considered (consideration 26 RGD). This possibility, which is not required in general and must be assessed in each case, could be relevant in those cases in which, without including data that may be related to an identified or identifiable natural person (Article 4.1) RGD, a satisfactory answer can be given to the councillors' request for access.

In a case like the one proposed, this could be relevant if, for example, the councilors' request for access was aimed at finding out what the City Council's action is in relation to this particular problem. To this end, they could be provided with aggregated information on the number of people served by social services, the reasons for their intervention, the specific actions carried out by the City Council (advice, mediation, processing of financial aid, re-housing ), etc.

Anonymized access could also be relevant if, for example, the purpose of the access request was to control the grants granted or denied in this context. For this purpose, they could be provided with aggregated information on the number of grants awarded, the type of grants (for rent and/or utility payments, for example), the amount, etc.

Another option, according to the purpose intended by the councillors, could be to deliver the information prior to the pseudonymization of the data, which, in terms of article 4.5) of the RGD, consists of "the treatment of personal data in such a way that they cannot be attributed to an interested party without using additional information, as long as said additional information appears separately and is subject to technical and organizational measures aimed at ensuring that personal data are not attributed to an identified or identifiable natural person".

In other words, deliver the information on the eviction files by introducing a coding system that preserves the identity of the people affected (a fixed numerical code for each person affected - not including, therefore, names and surnames or other identifying data -, only known by the City Council), so that they are not identifiable by third parties.

This option could be valid if, for example, the intended purpose of the councilors was to exercise a control function over the actions taken with respect to the people served by the City Council throughout one or successive financial years or trying to correlate the different types of measures adopted .

v

The City Council also considers, in its consultation, whether, once the personal identifying data of the people referred to in the files are known, councilors could use them to contact them.

As in the previous section, it is necessary to differentiate whether we are dealing with data processing carried out by councilors with management responsibilities in the field of social services or housing, or not.

Thus, in the first case, there would be no inconvenience for the councilor to be able to use the identification data of the people immersed in an eviction process for the purposes of contacting them and, as indicated in the letter of consultation, offer them help in the area of their competences, given that it would be a treatment framed in the exercise of the functions that are their own in this area of municipal action.

With regard to the second case, that is to say, when it comes to councilors without management responsibilities directly related to the file in question, special reference must be made to the principle of purpose limitation (Article 5.1.b) RGPD), according to which:

"1. The personal data will be:  
(...) b) collected with specific, explicit and legitimate purposes, and will not be subsequently processed in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose");"

It follows from this precept that any use of personal information subsequent to legitimate access by councilors without management responsibilities directly related to the file in question must also be based on a legitimate purpose. Otherwise, we could be faced with a treatment not adjusted to the RGPD, even though the access to personal data was initially considered legitimate.

In addition, this purpose in which the subsequent processing of personal data by these councilors is framed must not be incompatible with that which justifies their access to the data.

Point out, at this point, that the RGPD establishes, in its article 6.4, a series of aspects to be taken into consideration when assessing the possible compatibility between different purposes. In particular, you must bear in mind:

"a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided; b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller; c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10; d) the possible consequences for the interested parties of the planned subsequent treatment; e) the existence of adequate guarantees, which may include encryption or pseudonymization."

Therefore, the processing of the personal data of the people referred to in the files on evictions by councilors without management responsibilities

directly related to the file in question must always be linked and be necessary for the exercise of their functions of inspection and control of municipal actions or others granted to them by current regulations.

Any other treatment that could be carried out based on the knowledge of the personal data of the affected persons and that was not justified in the exercise of these functions would imply a change of purpose that would require the consent of the affected persons or the concurrence of another legal basis from those established in article 6.1 of the RGPD.

In this case, in which it is considered whether the councilors could use the identification data of the affected persons to contact them, it must be agreed that, in principle, it does not seem necessary that the exercise of the control functions of the councilors in the context in which we find ourselves must require direct communication with the people affected. If, from the examination of the information obtained, it could be deduced that the City Council has incurred some error or responsibility, the councilors may address the competent body or service in order to carry out the relevant checks, without this treatment implies a change in the purpose for which the access was motivated.

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

#### **Conclusions**

Given the nature of the information that can be contained in the files of the municipal social services on evictions, a generalized access to all the files by all the councilors of the corporation is not justified. Therefore, data anonymization or pseudonymization techniques should be used.

This without prejudice to the fact that, if the request for access is made by councilors with management responsibilities in this area of municipal action, both access to eviction files and the processing of data obtained for the purpose of contacting - there to offer them help.

Barcelona, February 13, 2019