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Opinion in relation to the inquiry made by the principal of a school about the City Council's refusal to hand over data relating to student beneficiaries of a subsidy.

A letter from the director of a school is presented to the Catalan Data Protection Authority regarding the City Council's refusal to hand over data relating to students who are beneficiaries of a subsidy.

Specifically, in the letter presented by the director it is stated that "the City Council (...) gives grants for school materials and books to parents who request them", that the payment of these grants "can go to the applicants' personal account or to the school's account (if the family so requests)" and that "the final destination of these grants is to pay the school for school supplies

According to him, the City Council does not provide them with a list of scholarship students citing data protection. Despite this, the school considers that, as an administration involved in the procedure, it should have that data, which is why it is consulting this Authority.

Having analyzed the consultation, which is not accompanied by other documentation, and in accordance with the report of the Legal Counsel, I issue the following opinion:

I

(...)

II

The consultation refers to the possibility that a City Council, which grants subsidies for the acquisition of school materials, can communicate to the school that carries out the consultation, the list of students who have been beneficiaries, based on how the administration involved in the procedure the school should have that data.

Although the query is not specified, it seems that it can be deduced from its content that the list of students it refers to are those enrolled in the applicant school.

The subsidies to which it refers, according to the information that this Authority has been able to gather, would be regulated by "the bases of the subsidies intended for the acquisition of school materials for students schooled in centers financed with public funds from (..),

approved by the plenary session of the City Council on May 25, 2017, and definitively approved on July 25, 2017.

In accordance with the regulatory bases, these subsidies, which are awarded in a competitive competition procedure (third base), have as their object "the awarding of individual grants to cover the expenses arising from the schooling of children and young people enrolled in centers financed with public funds, at the levels of compulsory education, specifically aid intended to cover the costs of acquiring school materials for Infant, Primary and Secondary Education" and which "are part of the social policy of the "City council (...) to allocate resources in order to guarantee adequate care for children in our municipality". In particular, it is indicated that "The purpose of these grants is to prevent risky situations and facilitate the integration and adequate development of the children of the municipality in the school environment."

It should be taken into consideration that 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), personal data means: "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".

Any processing of personal data, 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, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (4.2 RGPD), it is necessary to submit it to the principles and guarantees of the RGPD.

Among these principles that must govern any treatment of personal data provided for in the RGPD, the principle of legality (Article 5.1.a) RGPD) requires that personal data be treated in a lawful, fair and transparent manner in relation to the interested When one or more of the conditions provided for in article 6 of the RGPD are met, it may be considered that the treatment is lawful. These eligibility criteria are:

- "a) The interested party has given consent for the processing of their personal data, for one or several specific purposes.
- b) The treatment is necessary to execute a contract in which the interested party is a party or to apply pre-contractual measures at their request.
- c) The treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment.
- d) The treatment is necessary to protect the vital interests of the person concerned or of another natural person.
- e) The treatment is necessary to fulfill 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 to satisfy legitimate interests pursued by the person in charge of the treatment or by a third party, as long as the interests or fundamental rights and freedoms of the interested party that require the protection of personal data do not prevail, especially if the interested is a child.

What is provided in letter f) of the first paragraph does not apply to the treatment carried out by public authorities in the exercise of their functions. (...)"

In the case at hand, a hypothetical communication by the city council of personal data of the applicants or beneficiaries of a call for subsidies that it manages, to a third party, would constitute processing of personal data carried out by a " public authority" which must be subject to the principles and guarantees of the RGPD and which must be protected by one of the legal bases provided for in article 6.1 RGPD.

From what emerges from the consultation, it seems that in a case like the one proposed, the legal basis provided for in letter c) or that provided for in letter e) could apply.

In order for letters c) and e) of article 6 of the RGPD to constitute a legitimate basis for the treatment, the requirements established by the third paragraph of article 6 must be met, according to which:

"3. The basis of the treatment mentioned 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 to which the data controller is subject.

The purpose of the treatment must be determined on this legal basis or, with regard to the treatment referred to in section 1, letter e), it must be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller. This legal basis may contain specific provisions to adapt the application of the rules of this Regulation, including: the general conditions that govern the legality of the treatment carried out by the person in charge; the types of data subject to treatment; affected stakeholders; the entities to which personal data may be communicated and the purposes of this communication; the limitation of the purpose; the retention periods of the data, as well as the operations and procedures of the treatment, including measures to guarantee lawful and equitable treatment, such as those relating to other specific situations of treatment, in accordance with Chapter IX. The law of the Union or of the member states must fulfill an objective of public interest and must be proportional to the legitimate purpose pursued.

In the same way, the LOPDGDD in article 8 establishes:

"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 rule of European Union law or a rule with legal status, which can determine the general conditions of the treatment and the types of data subject to it as well as the appropriate transfers as a result of the

compliance with the legal obligation. This 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 processing 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 in charge, in the terms provided for in article 6.1 e) of the Regulation (EU) 2016/679, when it derives from a competence attributed by a rule with the status of law."

That is to say, the data protection regulations require that a rule with the rank of law or a rule of law of the European Union establishes the legal obligation payable to the data controller referred to in letter c) of the article 6 of the RGPD (in this case the obligation to provide information under the protection of the right of access provided for in the transparency regulations), and, likewise, that a rule with the rank of law attributes the competence that underpins the treatment when it is based on the fulfillment of a mission in the public interest or in the exercise of public powers conferred on those responsible for the treatment, referred to in letter e).

In the following Fundamentals we will analyze separately the possibility of basing the treatment on one of these two legal bases.

III

In the terms in which the query is formulated, it is not specified whether the school has made the request to the City Council as part of the exercise of the right of access to public information provided for in Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC).

The obligations imposed by the LTC can be a legitimate basis for processing in accordance with Article 6.1.d) of the RGPD as long as the access requirements established by this rule are met.

Article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legally constituted legal person" (section 1).

Article 2.b) LTC defines "public information" as "the 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 the which are supplied by the other obliged subjects in accordance with the provisions of this law".

State Law 19/2013, of December 9, on transparency, access to public information and good governance is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information) .

The information related to the beneficiaries of aid or subsidies is public information for the purposes of article 2.b) LTC and, therefore, remains subject to the access regime provided for in the transparency legislation. However, in accordance with article 20 et seq. of Law 19/2014, the right of access to public information may be denied or restricted for the reasons expressly

established in the laws. Specifically and with regard to information that contains personal data, it is necessary to assess whether the right to data protection of the affected persons would justify access.

Article 23 of the LTC establishes:

"Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, 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 affected party expressly consents by means of a written which must accompany the application."

Although it would be possible for the files corresponding to the processing of the call to include specially protected data referred to in article 23 of the LTC with respect to some of the beneficiaries, taking into account that the information in what the school wants to access is the identification data (name and surname) of the beneficiaries, it does not seem that access could affect the data referred to in article 23 of the LTC.

Outside of these cases, access is governed by the provisions of article 24.2 LTC:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. 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. (...)"

For the purposes of the aforementioned weighting, it must be taken into consideration that, in the matter of subsidies and public aid, both Law 38/2003, of November 17, general subsidies (LGS) and the transparency legislation, establish a special advertising regime, which, with regard to the right to the protection of personal data, has previously been analyzed by this Authority in Opinion 59/2016 (on the system of notification, publication and consultation of scholarships and grants), Opinion 6/2017 (regarding active advertising in the matter of subsidies and public aid), or Opinions 56/2017 and 4/2018 (in relation to the publication of the data of the beneficiaries of subsidies), which can consult the Authority's website www.apdcat.cat, among others.

Thus, as stated in those reports, the LGS regulates the advertising of subsidies through the creation of a national database of subsidies with the purposes and content provided for in articles 18 and 20 LGS.

Article 20 LGS attributes to the national grant database the purpose of promoting transparency but also "serving as an instrument for policy planning

public services, improve management and collaborate in the fight against subsidy and public aid fraud."

Regarding the content that must be collected by the national grant database, the second section of article 20 states that "it must include, at least, reference to the regulatory bases of the grant, call, program and credit budget to which they are imputed, the object or purpose of the subsidy, the identification of the beneficiaries, the amount of the subsidies actually granted and received, the repayment decisions and the penalties imposed."

On the other hand, with regard to the purpose of transparency of the national subsidy database, paragraph 8 of article 20 establishes:

"8. In application of the principles contained in Law 19/2013, of December 9, on transparency, access to public information and good governance, the BDNS must operate as a national system for advertising subsidies. For these purposes, and to guarantee the right of citizens to know all the subsidies called at any time and to contribute to the principles of publicity and transparency, the General Intervention of the State Administration must publish on its website the following contents: "a) (...) b) the subsidies granted; for publication, the awarding administrations must send the grants awarded to the national grant database, indicating, according to each case, the call, the program and budget credit to which they are attributed, the beneficiary, the amount granted and the objective or purpose of the subsidy, with an expression of the different subsidized programs or projects. Information must also be provided, when appropriate, on the commitment assumed by the members listed in section 2 and in the second paragraph of section 3 of article 11 and, in the case of multi-year subsidies, on the distribution by annuities .

Grants awarded must not be published when the publication of the beneficiary's data due to the purpose of the grant may be contrary to the respect and safeguarding of the honor, personal or family privacy of the natural persons in by virtue of what is established in Organic Law 1/1982, of May 5, on civil protection of the right to honor, personal and family privacy and one's image, and has been provided for in its regulatory regulation

The processing of personal data can only be carried out if it is necessary to satisfy the legitimate interest pursued by the data controller or by the third party or third parties to whom the data is communicated, provided that the interest or rights and fundamental freedoms of the interested party that require protection in accordance with Article 1.1 of Directive 95/46/EC. (...)"

Article 8.1 of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), to which Article 20.8 of the LGS refers, establishes:

"1. The subjects included in the scope of application of this title must make public, at a minimum, the information relating to the acts of administrative management with economic or budgetary repercussions that are indicated below:

(...) c) Subsidies and public aid granted with indication of their amount, the objective or purpose and the beneficiaries. (...)"

In this same sense, article 15 of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), relating to transparency in subsidized activity, establishes:

"1. The information relating to subsidies and public aid that the obliged subjects must make public in application of the principle of transparency must include: (...) c.) The subsidies and public aid granted, with an indication of the amount, the object and the beneficiaries. This information must include grants and aid, must be up-to-date and must refer to the last five years. It must also include subsidies and grants awarded without advertising and competition if these requirements have been exempted, in the cases established by law. In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved"

The LTC foresees the publication of the granting of subsidies and public aid as long as the preservation of the identity of the beneficiaries of those subsidies and public aid granted for reasons of social vulnerability is taken into account, given that the dissemination of these data in the transparency portals would entail, from the point of view of data protection, a much more direct impact on the right to privacy of these people.

Consequently, in accordance with the regulation provided for in the LGS as well as in the transparency legislation, there is an obligation to publish information relating to subsidies and aid. Despite this general rule of publicity, it will be necessary to preserve the identity of the affected persons, when the subsidy is granted for reasons of social vulnerability (art. 15.1.c) LTC), or "when the publication of the beneficiary's data due to the object of the grant may be contrary to the respect and the safeguarding of the honor, to the personal or family privacy of natural persons by virtue of what is established in Organic Law 1/1982, of May 5, on civil protection of right to honor, personal and family privacy and

In the case at hand, the purpose of the subsidies is to "prevent situations of risk and facilitate the integration and adequate development of the children of the municipality in the school environment" (second basis), it would therefore fall under the typology of subsidies granted for reasons of social vulnerability in respect of which article 15.1.c) requires the preservation of the identity of the beneficiaries in its publication.

With regard to access to this information, if it is taken into consideration that the purpose of these grants is precisely to prevent risky situations for the children of the municipality who, due to the income of the family unit, may have difficulties in having the material necessary for schooling, a disclosure of the identity of the beneficiaries, even by disclosure to the center where they are schooled, could go precisely against this purpose, due to the risk of stigmatization of these minors. Thus, although personal information for the mere fact of referring to minors is not considered sensitive or particularly protected data for the purposes of the RGPD, it must be agreed that given the legal asse

in relation to minors, information that refers to their person must always be treated with special care, as expressly stated in Recital 38 of the RGPD and especially when, as in the case at hand, there is the possibility to generate profiles.

On the other hand, the fact that the transparency law itself has chosen to preserve the privacy of the beneficiaries of grants or aid granted due to vulnerable situations means that people who participate in this kind of calls can have the expectation that their identity will not be disclosed to third parties or, even, be known by the school attended by the minors, in order to achieve transparency purposes.

For all this, it is considered that the transparency legislation would not be a legitimate basis that allows access to the name and surnames or any other information that allows the direct or indirect identification of the beneficiaries of the subsidies that are the subject of the consultation.

IV

With regard to the possibility of basing access on the exercise of a mission in the public interest attributed to the school (art. 6.1.e) RGPD), it must be taken into consideration that, although, as stated in the your inquiry, the school intends to access the list of beneficiaries of the subsidies as "administration involved in management", it does not specify what its participation in "management" would be that could justify its access.

The performance of a mission in the public interest or in the exercise of public powers conferred on the person in charge of the treatment, could be a legitimate basis for the treatment in accordance with article 6.1.e) of the RGPD, whenever they occur the requirements provided for in the RGPD and the LOPDG

The subsidies granted by the Public Administrations, including the entities that make up the local Administration, must conform to the LGS prescriptions (article 3 LGS).

Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal and Local Government Law of Catalonia (LMRLC), gives local bodies the power to "grant grants and aid with an economic content or of another nature in favor of public or private entities and individuals who carry out activities that complement or supplement local competences" (article 240).

In accordance with the LGS, prior to the granting of subsidies, the rules that establish the regulatory bases for concessions must be approved in the terms established by that law. The regulatory bases for the subsidies of local corporations must be approved "within the framework of the budget execution bases, through a general subsidy ordinance or through a specific ordinance for the different types of subsidies" (article 17.2 LGS).

In the case we are dealing with, as has been explained, the subsidies are regulated by "the bases of the subsidies intended for the acquisition of school materials for students schooled in centers financed with public funds, approved by the plenary session of the City Council.

These bases regulate the competence of the City Council as grantor and manager of the subsidies and it does not seem that any participation of the schools is attributed that could justify their legitimacy to access in the exercise of a mission in the public interest.

With regard to payment, the fourteenth base states that: "The City Council will pay the financial amount allocated to each beneficiary directly to the students' families after justification of the aid (...) and that in "exceptional cases the/ the beneficiary will be able to authorize the City Council to make the corresponding payment through an endorsement to the School. This authorization must accompany the request for financial aid".

In the case of beneficiaries who have opted for payment through endorsements at the school (fourteenth base), the communication to the center of the student beneficiaries of the subsidy who have opted for this payment system, would be based on the consent of the interested parties as a legitimate basis of this communication (article 6.1.a) RGPD), since the beneficiaries can opt for one or another payment system and are not necessarily obliged to use the endorsement at the school.

In short, in the case that we are concerned with the performance of a mission in the public interest or in the exercise of public powers conferred on the person in charge of the treatment, it would not be a legitimate basis for the treatment for access to the data of the beneficiaries of subsidies from schools.

All this without prejudice to the fact that anonymised information regarding the beneficiaries of the subsidies may be given to the school, which could consist of the number of beneficiaries from each school classified by year and level.

In accordance with the considerations made in these legal foundations in relation to the query raised, the following are made,

Conclusions

In view of the regulations for the protection of personal data, the access by the school center to the list of beneficiaries of subsidies for the acquisition of school materials for students schooled in centers financed with public funds of the municipality, beyond those cases in which the legal basis for access is the consent of the beneficiaries.

All this without prejudice to the fact that the school can be given anonymized information about the beneficiaries of the subsidies.

Barcelona, March 6, 2019