

Opinion in relation to the consultation of a city council on the use of data from the Municipal Register of Inhabitants to promote a process of citizen participation

A letter from a city council is presented to the Catalan Data Protection Authority in which it considers whether certain data from the Municipal Resident Register can be used to select a group of children under the age of 14, so that they can participate in the definition or promotion of a space for children's participation in the context of the development of the City Educational Project.

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

I

(...)

II

The City Council states, in its consultation letter, that the Municipal Plenary approved the commitment to develop the work proposals of the strategic lines of the City Education Project, a strategic and participative instrument available to the local government to make the concept of "educating city" is possible and operational.

Specifically, it refers to the will of the council to develop the proposal "Citizen participation, children's participation space", through the creation of a "work committee made up of members of the driving group and municipal representatives for the definition of a space for children's participation, on a regular basis, that takes into account their voices from the very definition of this participatory model."

In order to guarantee the participation of children in the definition of this participatory space model, the City Council wants to randomly select children registered in the municipality. Specifically, it would be about choosing a gender-matched group of 24 children between the ages of 9 and 14. The election would be carried out by means of a public lottery (six would be held in total, one for each age group) and it is intended to have the explicit consent of the holders of parental authority or guardianship of these children.

Having said that, it asks this Authority whether it can use certain personal data from the Municipal Register of Inhabitants for this purpose, an issue that will be examined below.

III

The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), establishes that all processing of personal data must be lawful, loyal and transparent (article 5.1.a)).

In order for this treatment to be lawful, one of the legal bases of article 6.1 of the RGPD must be met, either the consent of the affected person (letter a)) or one of the other legal bases provided for in the same article, such as now, for the purposes that concern, that "the treatment is necessary for the fulfillment of a mission carried out in interest

public or in the exercise of public powers conferred on the person responsible for the treatment" (letter e)).

As can be seen from article 6.3 of the RGPD, the basis of the treatment indicated in article 6.1.e) of the RGPD must be established by the law of the European Union or by the law of the Member States that apply to the person responsible for the treatment, which, in the case of the Spanish State, must be in a rule with the rank of law (Article 53 EC).

This is established in Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD):

"Article 8. Data treatment protected by law. 1. (...)

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 law."

Therefore, to consider the data treatments covered by the legal basis of article 6.1.e) of the RGPD there must be a regulatory provision with the rank of law.

In the present case, reference must be made to Law 7/1985, of April 2, regulating the bases of the local regime (hereafter, LRBRL).

Article 16.1 of this law defines the Municipal Register in the following terms:

"1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"

The LRBRL (and, in the same sense, the revised Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28) establishes the obligation of all residents to register in the Register of the municipality where you have established your residence with a triple purpose: to determine the population of a municipality, to be required to acquire the status of resident and to serve as proof of residence and habitual residence (articles 15 and 16 LRBRL).

Likewise, it establishes that the registration in the Municipal Register will contain the following data as mandatory: first and last name, sex, usual address, nationality, date and place of birth, number of the identity document (or, for foreigners, the card residence or identity document number), certificate or school or academic degree, and, finally, those data that may be necessary for the preparation of electoral censuses, as long as fundamental rights are respected (article 16.2 LRBRL).

And also that "the formation, maintenance, review and custody of the municipal Register corresponds to the City Council, in accordance with what is established by State legislation. (...)" (article 17.1 LRBRL).

In view of these precepts, it can be said, therefore, that the treatment of data from the Municipal Population Register by the municipalities in compliance with the obligations established in the LRBRL would be legitimized by the legal basis of the article 6.1.e) of the RGPD.

IV

Having said that, it must be borne in mind that this data processing, like any other, must also comply with the rest of the principles established in the RGPD, especially, for the purposes that are of interest in the present case, the principle of limitation of purpose (Article 5.1.b) RGPD), according

"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") ; (...)"

Regarding this, recital 50 of the RGPD provides that:

"The processing of personal data with purposes different from those for which they were initially collected must only be allowed when it is compatible with the purposes of their initial collection. In such a case, a separate legal basis is not required, other than the one that allowed the personal data to be obtained. If 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, the tasks and purposes for which the subsequent treatment should be considered compatible and lawful can be determined and specified in accordance with the Law of the Union or of the Member States. Subsequent processing operations for archival purposes in the public interest, scientific and historical research purposes or statistical purposes must be considered compatible lawful processing operations. The legal basis established in the Law of the Union or of the Member States for the treatment of personal data can also serve as the legal basis for the subsequent treatment.

In order to determine whether the purpose of the subsequent treatment is compatible with the purpose of the initial collection of personal data, the person responsible for the treatment, after having fulfilled all the requirements for the authorization of the original treatment, must take into account, among other things , any relationship between these purposes and the purposes of the intended subsequent treatment, the context in which the data were collected, in particular the reasonable expectations of the interested party based on their relationship with the person responsible for their subsequent use, the nature of the data personal, the consequences for the interested parties of the planned subsequent treatment and the existence of adequate guarantees both in the original treatment operation and in the planned subsequent treatment operation. (...)"

As we have seen before, the Municipal Register is a type of file with a very specific purpose: to determine the population of the municipality, to be required to acquire the status of resident and serve to certify residence and habitual address (article 15 LRBL).

Point out that these purposes are clearly included in Sentence 17/2013, of January 31, of the Constitutional Court, where the Municipal Register is defined as:

"The administrative register containing the residents of a municipality, a register managed by the local councils through computerized means (art. 17.1 LRBL) in which the persons residing in a municipality must be registered with a triple purpose, according to the arts. 15 and 16 LRBL, determine the population of the municipality, acquire the status of neighbor and accredit residence and usual address. In addition

of these functions, the electoral regime legislation provides for the preparation of the electoral census based on the data contained in the Register, which also serves to prepare official statistics subject to statistical secrecy. So, from the regulation of the LBRRL itself we can conclude that the register contains an organized set of personal data referring to identified physical persons, the residents of a municipality, being therefore a personal data file to which the regulations provided for in the LOPD.”

Thus, in accordance with the aforementioned principle of purpose limitation (Article 5.1.b) RGPD), the data of the Municipal Register may only be used for other purposes to the extent that they are not incompatible with this triple purpose that in justifying the initial collection.

On this matter, it must be said that this Authority, in previous opinions (among others, CNS 67/2015, CNS 46/2016, CNS 12/2017, CNS 20/2017 or CNS 47/2017, available on the website <http://apdcat.gencat.cat>), has considered that, in view of the type of personal data that must be included in the Register (article 16.2 LRBRL), it is understood that there may be municipal purposes that could enable the processing of these data to the extent that they are not purposes incompatible with the Padró's own, previously described. Specifically, we are referring to the exercise of the powers that the local regime legislation attributes to the town councils, mainly following the provisions of articles 25 and 26 of the LRBRL (and, in similar terms, articles 66 and 67 of TRLMRLC).

It has also been pointed out, in the aforementioned opinions, that, since the LRBRL itself (article 16.3) admits the communication of data from the Municipal Register to other public administrations that request them when they are necessary for the exercise of their powers and exclusively for matters in which residence or address are relevant data - possibility also endorsed by the Constitutional Court (STC 17/2013, of January 31, cited)-, with greater reason it can be admitted that the different units or administrative bodies of the same town hall can access this data when they are necessary for the 'exercise of their functions and when the given residence or address is relevant.

In the present case, the City Council intends to use the data from the Register to choose, through a public lottery, a group of children from the municipality and, it is understood, to inform them about the possibility of being able to act as representatives of the rest of the 'children in the definition, together with the rest of the members of the work committee created for that purpose, of a space for participation in the context of the development of the City Educational Project. It must be seen, therefore, whether these new purposes are compatible with the Padró's own.

Article 6.4 of the RGPD establishes that:

"4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data was initially collected, will take into account, among other things: 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.”

Given that in the case examined the initial collection of data from the Register is carried out, as seen, in compliance with a requirement of the LRBRL, it is necessary to see if this legal provision could act as a legal basis for the change intended purpose.

v

Article 18 of the LRBRL (and, in similar terms, article 43 of the TRLMRLC) lists the rights of residents, among others:

"b) Participate in the municipal management in accordance with the provisions of the laws and, as the case may be, when the voluntary collaboration of the neighbors is interested in the governing bodies and municipal administration. (...) f) Request the popular consultation in the terms provided for in the law.”

Article 69.1 of this same law (and, in similar terms, article 154 of the TRLMRLC) provides that "local corporations will facilitate the most extensive information on their activity and the participation of all citizens in local life."

Article 70.bis of the LRBRL adds, for the purposes that are now relevant, that:

"1. The town councils must establish and regulate in organic norms the procedures and bodies suitable for the effective participation of the neighbors in the affairs of local public life, both in the scope of the municipality as a whole and in that of the districts, in the event that these territorial divisions exist in the municipality. (...)

3. Likewise, local entities and, especially, municipalities must promote the interactive use of information and communication technologies to facilitate participation and communication with neighbors, for the presentation of documents and for the completion of procedures administrative, surveys and, where appropriate, citizen consultations. (...).”

These precepts of the LRBRL attribute to councils competences in the matter of promoting citizen participation and expressly empowers them to, in this sense, carry out processes of citizen participation, in any of the forms of participation provided for by the legal system, in accordance with the procedure established in each case.

For the purposes of implementing these forms of citizen participation, the data relating to the address may be relevant, given that the status of neighbor may be a necessary requirement to guarantee participation. And, as we have seen, the status of neighbor is acquired by registration in the Register (article 15 LRBRL).

In the present case, the City Council aims to promote and develop the right of participation of the children of the municipality in the context of the development of the City Educational Project and use the data from the Register to choose, by means of a lottery, the children called to participate .

It can be said, therefore, that the purposes for which the subsequent processing of the data of the Register by the City Council (to facilitate the exercise of the right to citizen participation) will be related to the purposes for which they were initially collect the data (Article 6.4.a) RGPD).

In addition, it must be taken into account that it would, in any case, be merely identifying personal data (name, surname and address) and personal characteristics (age), in such a way that its treatment for these ulterior purposes should not lead to a special impact on the right to data protection of those affected (Article 6.4.c) RGPD) or serious consequences for them (Article 6.4.d) RGPD), particularly taking into account that it will be the affected who, in the last instance, will decide whether it wants to participate in the participatory process carried out by the City Council.

All in all, it can be said that the use of data from the Register to select a group of children from the municipality and inform them of the possibility of acting on behalf of the rest of the children in the promotion or definition of 'a space for citizen participation could be considered legitimate, as it concerns purposes compatible with that of the Register (Article 5.1.b) RGPD), protected by the LRBRL itself (Article 6.4 RGPD).

Therefore, agreeing that it would not be necessary to resort to another legal basis to legitimize this treatment, such as the consent of the interested parties or, in this case, for children under 14 years of age, of the holders of parental authority or guardianship (Article 6.1.a) RGPD and Article 7 LOPDGDD). The treatment of children's data, in this case, would be protected by the legal basis of article 6.1.e) of the RGPD, being necessary "for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge of the treatment".

Likewise, agreeing that, by application of the principle of data minimization (article 5.1.c) RGPD), only the minimum data from the Register may be used to comply with the indicated purposes.

In this sense, it is considered appropriate to use the data relating to the first and last name, date of birth and address of the children mentioned in the consultation letter. Point out, given that the City Council maintains that the selection will be equal in terms of gender, that the use, if appropriate, of data relating to sex would also be appropriate.

All this, it must be said, as long as the regulations governing the form of citizen participation chosen by the City Council do not provide for a specific instrument to select the people called to participate, as explained below.

v

The consultation document mentions the creation of a participation space where children can meet dynamically and periodically, and share concerns, wishes and generate proposals within the development of the City Educational Project.

In view of these manifestations, it cannot be ruled out that we are faced with the possible holding of a participation forum, modality of participatory process regulated in Law 10/2014, of September 26, of non-referendum popular consultations and others forms of citizen participation.

Article 40 of this Law defines citizen participation processes as "institutionalized actions intended to facilitate and promote citizen intervention in the orientation or definition of public policies" (section 1), which aim to "guarantee the debate and deliberation between citizens and public institutions to collect the opinion of citizens regarding a specific public action in the phases of proposal, decision, application or evaluation" (section 2).

A priori, people over the age of sixteen can take part, although Law 10/2014 itself contemplates the possibility of reducing the minimum age of participants if the nature or purpose of the process requires or advises it (article 41.1).

Article 55 of Law 10/2014 regulates participation forums in the following terms:

"Article

55 Forums of participation

1. Participation forums are organized as spaces for deliberation, analysis, proposal and evaluation of initiatives and public policies. Participation forums can be temporary or permanent.
2. The forums are made up of a group of citizens and representatives of civic organizations selected by the administration as a representative sample of a sector or group directly concerned by the initiative or public policy. They may also include independent subject matter experts.
3. The forums can have the following purposes:
 - a) Deliberate on the suitability of a public initiative that is to be put into practice and foresee the effects on the sector to which it is directed.
 - b) Monitor public policies and propose measures to improve them, especially with regard to the provision of services.
 - c) Analyze and evaluate the results of public policies.
4. For the effectiveness of what is established in this article, the Generalitat and the local bodies must create and regulate a participation register in which the persons, entities and representative civic organizations who wish can voluntarily register, for to be part of the forums and be an active part of them.
5. The composition of the forums that are established must be determined by means of an election from among the people and entities registered in the participation register, unless the specialized nature of the participation process advises making a designation. In the latter case, the selection must be made in the most plural way possible and in accordance with the other principles established in article 2."

In accordance with this precept, participation forums constitute "spaces for deliberation, analysis, proposal and evaluation of initiatives and public policies" (section 1) and can have as their purpose, among others, that of "deliberate on the suitability of a public initiative that is to be put into practice and foresee the effects on the sector to which it is directed" (section 3.a)).

It should be borne in mind that the City Council intends to create a space in which children can deliberate and present proposals on the definition of a participation model for children in the municipality as part of the development of the City Educational Project, an initiative that could fit in with a participation forum.

If this is the mode of participatory process chosen, it should be taken into consideration that Law 10/2014 itself establishes that the composition of the participation forums must be determined through an election among the people and entities that have voluntarily registered in the participation register (article 55.5). For this reason, if this modality is used, it must be borne in mind that the data from the Municipal Register of Inhabitants could only be used to inform the children of the municipality, aged between 9 and 14, of the possibility of registering in the participation register.

This registration should be made by the holders of parental authority or guardianship of children under 14 years of age, or the same child when he is 14 years of age or older, in accordance with article 7 of the LOPDGDD. Once registered, the election could be carried out in the terms indicated in the query.

Remember that, in application of the principle of data minimization (Article 5.1.c) RGD, the data from the Register to which the City Council has access should be limited to the minimum necessary to fulfill the intended purpose, that is get in touch with the children to inform them about the possible registration in the participation register.

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

Conclusions

The City Council can access data from the Municipal Register of Inhabitants in order to choose, through a public lottery, a group of children from the municipality and inform them about the launch of a citizen participation process in the context of the elaboration of the City Educational Project, given that it is a purpose compatible with that of the Register and protected by the exercise of the powers entrusted to it in the matter of promoting citizen participation (articles 5.1.b) and 6 GDPR).

In the event that the participative process modality chosen is a participation forum, the data from the Register could be used to communicate to the children of the municipality, aged between 9 and 14, the possibility of registering in the register of participation created for that purpose, and subsequently make the draw among the registrants.

Barcelona, April 17, 2019