

## **Opinion in relation to a query about the dissemination and access to certain information of legal entities**

A letter is presented to the Catalan Data Protection Authority that raises two issues related to the treatment of certain information (...).

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

I

(...)

II

(...) states in its consultation letter that they are working on expanding a Guide to Legal Entities from a double perspective: on the one hand, they want to expand the information that is disseminated through this Guide, which is accessible from a website; and, on the other hand, we want to expand the way to consult said information, also publishing it openly (open data).

He states, then, that doubts are raised from the point of view of data protection, given that through publication in open data it could be easier to obtain "global" information about the people affected. For this reason, it raises whether or not the information to be disseminated would be affected by data protection regulations.

On the other hand, it also raises, in this same consultation letter, what would be the way to act, from the data protection side, in the face of an eventual request for access to the economic report of the annual accounts of the foundations and associations registered in the registers it manages.

He declares, on this matter, that this documentation may contain personal data, such as the name of the beneficiaries of the activities of the foundations and associations, and that doubts are raised as to whether this data could be provided or should be anonymized. the way, he maintains, it has been done until now.

Both issues are examined, separately, in the following sections of this opinion.

III

### **Expansion of the information of the Guide of Legal Entities that is disseminated**

For the information available, the Legal Entities Guide is a database, accessible from the website [http://justicia.gencat.cat/ca/serveis/guia\\_d\\_entitats/](http://justicia.gencat.cat/ca/serveis/guia_d_entitats/), which allows public consultation of identifying data of associations, private foundations, professional associations, corporate academies, religious entities and federations of Catalonia, so that civil society can be aware of them and, where appropriate, address them.

This database or application is fed by the information registered in the Register of Legal Entities managed by the Department, a register which in turn incorporates the data from the registers corresponding to each of the types of entities mentioned above.

Article 315-1 of the third book of the Civil Code of Catalonia (Law 4/2008, of April 24) states that the records of legal persons dependent on the Generalitat are public.

As this Authority has highlighted on numerous occasions (among others, in the IAI report 52/2018, available on the website <https://apdcat.gencat.cat>), the public nature of the records provided for by the applicable regulations it must not presuppose access to any type of personal information that they may contain.

In this sense, article 315-8 of the CCC provides that "publicity of the registers of legal entities is effective, in electronic or paper form, by means of a certificate of the content of the settlements, of a simple informative note or of a copy or an extract of the settlements" (section 1) and, he adds, that this formal publicity "must be done in compliance with the rules on the protection of personal data" (section 4), as well as that "only the persons to which the registered personal data refer and their legal representatives can access the advertising of settlements that contain data of this nature or authorize third parties to access them" (paragraph 5).

Currently, the registered data that can be consulted through said Guide, by previously filling in one of the available research fields, are data relating to the type of entity, number and date of registration in the register, address, town, postal code, county, general classification, phone, fax, email address and/or website.

This is, in any case, information relating to legal entities that cannot be qualified as personal data (Article 4.1) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27 of 2016, General of Data Protection (hereafter, RGPD)). Consequently, its dissemination or publication, through the aforementioned Guide (or in open data), does not pose any inconvenience from the perspective of data protection.

The Department now intends to expand the information disseminated through this Guide in the following sense:

Regarding the foundations, incorporating:

- a) Names of the founders.
- b) Purposes. c) Annual accounts (only financial information, not including the report). d) Composition of the Board of Trustees. e) CIF

Regarding associations and federations, incorporating:

- a) Purposes.
- b) Accounts (only financial information, not including the report, and with regard to associations declared to be of public utility).
- c) Composition of the Board of Directors. d) CIF

Regarding the colleges and councils of professional colleges, and the academies, incorporating:

- a) Purposes.
- b) Composition of the Board of Governors. c) CIF

In other words, it aims to disseminate or publish information also of a personal nature (Article 4.1) RGPD), specifically of the members of the governing body of the entity in question and, in the case of

foundations, also of its founder or founders. It must be taken into account that this publicity would cover not only the identity of these people but also, as the case may be, other personal information such as that relating to the position they hold and/or the profession they practice or, even, information about their personal interests or hobbies.

#### IV

The RGPD establishes that all processing of personal data must be lawful, fair 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 that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c)) or "the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of powers public conferred on the person in charge of 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.c) i) of the RGPD must be established by the Law of the European Union or by the law of the Member States that applies 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.c) or 6.1.e) of the RGPD there must be a regulatory provision with the rank of law.

From the provisions of article 315-8 of the CCC, cited above, it does not appear that there is sufficient authorization to consider that the personal information that may be contained in the Register of Legal Entities about the members of the governing bodies of the registered entities, for which the General Directorate would be responsible, may be the subject of dissemination in the terms set out in the consultation, this is through the Legal Entities Guide or in open data. Nor with regard to the information about the founder or founders of the foundations, on the understanding that they would be living natural persons, given that otherwise the data protection legislation would not apply (Article 1 RGPD and Article 2 LOPDGDD) .

In the consultation letter, on this issue, Law 19/2014, of 29 December, on transparency, access to public information and good governance (hereafter, LTC) is pointed out.

The LTC regulates, in its Title II, the regime of transparency in public activity, through which it obliges all the subjects included in article 3 to adopt the necessary measures to facilitate people's knowledge of the "public information", understood as "information" drawn up by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law " (article 2.b) LTC).

In accordance with article 3 of the LTC, both public law corporations in what affects the exercise of their public functions (section 1.b)), as well as private entities that receive aid or

public subsidies in an amount greater than €100,000 or, when more than 40% of their total annual income comes from public grants, as long as they reach at least €5,000 (section 4), they are obliged to make effective the active advertising obligations established by the LTC.

Article 8 of the LTC determines the information subject to the transparency regime, which "must include all data and documents with the scope and precision determined by articles 9 to 15" of the LTC (section 2).

Article 9.1 of the LTC provides that "the information relating to the institutional organization and administrative structure that the Administration must make public in application of the principle of transparency must include: (...) b) The internal organizational structure of the Administration and of the bodies and entities referred to in letter a, with the identification of those responsible for the various bodies and their professional profile and career. (...)".

"Public Administration", for the purposes of the LTC, means "public administrations and bodies, public bodies and instrumental bodies of the public sector and entities linked to the Administration referred to in article 3.1. a, b, ic, and the other public bodies and institutions included in article 3.1.b" (article 2.f) LTC).

From these precepts of the LTC it follows, for the purposes that concern them, that the composition of the Board of Governors of the colleges and councils of professional colleges and academies, with an indication of the identity (name and surname) and position held by each member, is information that must be published.

Also that the composition of the governing bodies with identification and position of the members and, where applicable, of the delegated, advisory and internal control bodies of the associations, federations and foundations that receive public funds in the terms of the article 3.4 of the LTC is information that must be published (also, in the specific case of foundations, it could be the identity of its founder or founders).

Regarding associations and foundations, the Resolution must also be taken into consideration JUS/1563/2015, of July 6, which complies with the seventh additional provision of the LTC.

DA 7a of the LTC provides that "the head of the department competent in matters of justice must determine by resolution, within six months, the transparency obligations established by this law that foundations and associations already comply with of their specific legislation. This information must be included in the Transparency Portal, and foundations and associations only have the obligation to state that it can be consulted."

By "specific legislation" it is necessary to understand, as stated in said Resolution, both Law 21/2014, of December 29, on the protectorate of foundations and verification of the activity of associations declared to be of public utility, and the third book of CCC

Section 1.1 of Resolution JUS/1563/2015 establishes:

"1.1 Obligations of transparency in the organizational structure, activity and purposes of the entities

The information referred to in letter b) of article 9.1 of Law 19/2014, of December 29, relating to the internal organizational structure, is equivalent to the information in the letter

**c) of article 6.2 of Law 21/2014, of 29 December, relating to the statutes, the composition of the governing bodies and the management team and the organizational structure, and the information in article 333.8. e) of the Civil Code of Catalonia, when it alludes to companies eventually majority-owned by a foundation, with the indication of the percentage of participation. (...)"**

**It follows from this provision, for the purposes that concern them, that the composition of the governing bodies with identification and position of the members and, where appropriate, of the delegated, advisory and internal control bodies of the foundations and associations with declaration of public utility, subject to Law 21/2014, is information that must be published.**

**For the specific case of foundations, it could also be the identity of its founder or founders, bearing in mind that this would also be information related to the entity's mission, which, in accordance with article 6.1 of Law 21/2014, is relevant information for transparency purposes.**

**In view of the set of these precepts it can be said that there would be no inconvenience from the point of view of data protection to be able to publish this personal information regarding the aforementioned entities, given that, in response to this publication in compliance with a legal obligation in terms of transparency, would result in legitimate treatment on the basis of article 6.1.c) of the RGPD.**

**However, it should be pointed out that the fulfillment of these active advertising obligations falls in any case on the legal entities themselves (Article 3.6 LTC and Article 4.2 Law 21/2014) and not on the General Directorate, although it may also have of this personal information when managing the Register of Legal Entities (article 315-2.Third, Third Book CCC).**

**Having said that, it must be taken into account that the aforementioned legislation also provides for the obligation of these entities subject to active transparency criteria to communicate the respective transparency websites in order to be able to integrate their information into the Transparency Portal (article 5.5 and DA7a LTC ).**

**This communication is carried out specifically in the Department and the information on the entities' website is entered in the aforementioned Register of Legal Entities to later disseminate it (after research and in open data) through the Transparència Catalunya portal, a portal created specifically to allow people easy and free access to information about local administrations and other actors who, due to their relationship with the Administration, are obliged to publish their data so that citizens can identify them (among them, the corporate administration and associations, foundations and other private entities).**

**This, added to the fact that we are dealing with information that, as we have seen, must be public knowledge, could lead to admit the possibility that this same personal information about the members of the governing bodies of the colleges and councils of professional associations, academies, associations, federations and foundations (and about the founder when applicable) that is or must be public, by application of the LTC (article 3.4) or Law 21/2014, could be also disseminated by the General Directorate through, in this case, the aforementioned Guide of Legal Entities. It would not seem very logical to limit the dissemination through this medium (the Guide) of personal information that the same entities make available to any citizen on the respective websites and that which the Department itself sends from th**

**On the other hand, taking into account that article 19 of the LOPDGDD establishes a legal authorization for the processing of the data necessary for the professional location of natural persons who provide services in a legal entity (contact data and, if where appropriate, those relating to the functions or position they occupy), with the sole purpose of maintaining relations with**

this legal person, the possibility of disseminating, through the Legal Entities Guide or in open data, the name, surnames and position of the members of the governing bodies of the rest of the private entities registered in the Register could also be admitted of Legal Entities that are not subject to active advertising by transparency legislation, especially taking into account that this would be information referring to people who hold positions of responsibility in said entities.

Given this possibility, it must be borne in mind that said dissemination should, in any case, be limited to the name, surname and position of these people, in accordance with the principle of data minimization (Article 5.1.c) RGPD).

Also point out the need to take into consideration the risks that may be involved in opting for this dual way of advertising information (Guide of Legal Entities and the Transparency Catalunya portal) from the point of view of the principle of accuracy of the data (Article 5.1.d) RGPD).

The application of this principle means that the information must be accurate. And this implies not only the accuracy at the time when the publication is carried out, but also during the entire period in which it is accessible to citizens. For this reason, it will be necessary to ensure that the information disseminated through the Legal Entities Guide is adapted at all times to that which the aforementioned entities disseminate through the respective transparency portals.

Point out, at this point, that the dissemination of information about the members of the governing bodies (and about the founder) of these entities in reusable formats would not pose any inconvenience from the point of view of data protection, as long as it is limited to the aforementioned personal data.

On this issue, it should be noted that the LTC itself provides, in its article 16, that "obligated subjects must provide people with access to public information in a reusable format, in order to improve transparency, generate value to society and promote interoperability between administrations, within the limits established by the regulations on reuse of public sector information" (section 1).

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#### Access to the financial report of the annual accounts of foundations and associations

The Department also raises, in this same letter of inquiry, what would be the way to act in the event of a request for access to the financial report of the annual accounts of the foundations and associations registered in the registers it manages, given that it could include the identity of the beneficiaries of the activities carried out by these entities, and, in particular, whether this information should be anonymised.

Article 313-1 of the CCC provides that "legal entities must keep an orderly, diligent accounting system that is appropriate to their activity, that faithfully reflects it and that allows them to follow the operations chronologically and prepare the accounts yearly".

Article 315-1 of the CCC provides that the registers of legal entities dependent on the Generalitat assume the functions of qualification, registration, certification and also "depositing accounts and other documents."

According to article 322-15 of the CCC, section 2, "associations declared to be of public utility must submit to the department of the Generalitat competent to register them, in the six months following the closing date of the financial year, the approved annual accounts, a report of activities and, where appropriate, in accordance with their regulations, the audit report".

With regard to foundations, according to article 333-9 of the CCC "the board of trustees must approve the annual accounts in the six months following the closing date of the financial year. The accounts must be submitted to the protectorate within thirty days from the day they are approved, by means of documents in electronic support guaranteed with electronic signature systems accepted by public administrations."

The annual accounts are a set of documents made up of (article 333-8 CCC):

- a) The balance sheet.
- b) The income statement.
- c) The state of changes in equity.
- d) The statement of cash flows.
- e) The financial report.
- f) And the report of activities (only for associations with declaration of utility public (article 322-15.2 CCC).

In view of these precepts, it is clear that the financial report of the annual accounts of foundations and associations declared to be of public utility is information contained in the respective registers.

The first additional provision, section two, of the LTC establishes that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law. "

The information included in the registers of foundations and associations is one of those subjects that could be said to have a special access regime, regulated mainly by the third book of the CCC, already cited.

As we have seen, the CCC provides that the records of legal persons dependent on the Generalitat are public (article 315-1) and determines the regime of access to the information contained in them in the following terms:

"Article 315-8

Formal publicity

1. Publicity of the registers of legal entities is effective, in electronic or paper form, by means of a certificate of the content of the settlements, a simple informative note or a copy or an extract from the settlements.
2. Only the certificate, which can be issued by means of an authentic electronic copy, attests to the content of the settlements.
3. The registers of legal entities must make it possible for interested parties to consult their content electronically. In the case of authorities, employees or public officials who act by reason of their office or position, the interest in consulting the content of the records is presumed.
4. Formal advertising must be done in compliance with the rules on personal data protection and those established by regulation for mass requests.
5. Only the persons referred to in the registered personal data and their legal representatives may access the advertising of settlements that contain data of this nature or authorize third parties to access them. (...)"

Therefore, in the face of an eventual request for access to the information contained in these records, it would seem appropriate to consider that the provisions of the specific regulations should apply and, additionally, where not provided for by it, those of the LTC.

In accordance with this article 315-8 of the CCC, interested persons can request a copy of the documents deposited in the registers, among which there is the financial report of the annual accounts of the foundations and associations with declaration of public utility .

The content and format of this document is determined by the specific regulations for foundations and associations and by the Accounting Plan that applies to the entity, taking into account its size based on the volume of its assets, the volume of income and the average number of people hired.

According to article 333-8.e) of the CCC, in the report "the information contained in the balance sheet and the income statement must be completed, expanded and commented on and the actions that have been carried out must be detailed made in compliance with the founding purposes, specifying the number of beneficiaries and the services they have received, and also the resources from other years pending allocation, if any, and the majority-owned companies, with the indication of the percentage of participation."

In accordance with Decree 259/2008, of December 23, which approves the Accounting Plan for foundations and associations subject to the legislation of the Generalitat de Catalunya, the financial report must include, in terms general, information regarding the activities carried out by the entity during the financial year, the accounting criteria that have been applied to account for the economic movements of the entity, information regarding the financing operations that have been carried out , both in terms of debtors and creditors, criteria for granting aid that the entity may have made and information on its recipients, changes in the governing body of the entity, collaboration agreements signed and, in short, all those operations that facilitate the understanding of the information contained in the rest of the accounting statements that complete the annual accounts (Section I, relating to the rules for preparing the annual accounts).

This document, as well as the rest of those that make up the annual accounts of foundations and associations with a declaration of public utility, must serve to show a true picture of the assets, financial situation and results of the entity. In other words, it must understand the appropriate information to show with full transparency what the economic situation of the entity is. Precisely, to reinforce this idea of transparency, the regulations also establish that the entities make these accounts public, therefore also the financial report (article 333-12 CCC).

In view of these forecasts, it does not appear that the aforementioned document should contain personal data of the recipients of the activities carried out by these entities (the CCC speaks of "number", therefore of aggregated information) or, at the very least, they should not appear in such a way as to be identifiable.

In the letter of inquiry it is pointed out that the names of these people could be included. However, it must be taken into consideration that, beyond these identifying data, there could also be special categories of data (Article 9 RGPD) depending on the activity performed and/or the nature of the foundation or association or data deserving of a special reservation or confidentiality due to the concurrence of certain qualified circumstances (for example, situations of social vulnerability, data of minors, etc.).

It is worth remembering, at this point, that, in accordance with article 315-8.5 of the CCC, "only the persons referred to in the registered personal data and their legal representatives may access the advertising of settlements that contain data of of this nature or authorize third parties to access it."



**Therefore, it would not be possible to allow a third party access to the personal data that may be contained in the aforementioned financial report, unless it is the owner of the data or has their authorization for that purpose. The alternative would be to provide this document anonymously (consideration 26 RGPD).**

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

### **Conclusions**

**In view of the regulations examined, the possibility of expanding the information accessible through the Guide to Legal Entities, as well as its dissemination in open data, regarding people who hold positions in governing bodies or who have have been founders of the entities registered in the Register of Legal Entities.**

**The access of a third party to the financial report of the annual accounts of foundations and associations of public utility should be carried out prior to the anonymization of the personal data that may be contained therein, unless it has the consent of the persons holding them of the data.**

**Barcelona, July 5, 2019**