

CNS 31/2019

Opinion in relation to the query made by a city council on the identification of civil servants in the reception of postal mail.

A query from a City Council is presented to the Catalan Data Protection Authority regarding the identification of civil servants in the reception of postal mail.

In its consultation, the city council explains that the SAC is the City Council service entrusted with the functions relating to the general register and that the staff who make up it must receive the mail sent to the city council.

He also explains that, recently, some workers refuse to give their data to post office employees or other courier companies who ask them to identify themselves with their first name, surname and ID so that they can be given the documentation, which is why request advice from this Authority.

After analyzing the consultation, which is accompanied by a circular issued by the Transparency Service, Citizen Attention and Organization of that town hall regarding the issue raised, this one Legal Advice issues the following report:

I

(...)

II

The city council states in its consultation that in recent months the Post Office and other courier companies have been asking the employees who collect the daily correspondence to identify themselves with their name, surname and ID so that they can be given the documentation, when until then only they asked for the seal of the City Council.

It also states that, as a result of this request, some employees of the Citizen Service (SAC) refuse to give their personal data, which is why the Transparency, Citizen Service and Organization Service and the General Secretariat from that town hall they issued circular no. 1/2019, which includes the instructions on the general register and the management of correspondence and agree to request advice on the matter from this Authority.

In the aforementioned circular it is stated that one of the functions of the SAC's workplace is to receive mail, a function that entails collecting it either by post or delivered by a courier, and, in his capacity as a public employee identify yourself so that it can be delivered to you.

We are therefore faced with a situation in which a certain person (employee of a postal operator, courier, etc.) goes to the SAC of the town hall to deliver a certain

documentation and requests from the person who attends it (it is understood that an employee of the SAC to whom it corresponds, among other functions specific to his workplace, the management of the register and the reception of correspondence) a receipt of receipt of the aforementioned delivery, in which the data contain their identifying data. And it is considered whether the worker can refuse this identification.

To answer the question raised, from the perspective of data protection regulations, it is necessary to take into account Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Protection of Data (hereafter, RGPD) which defines personal data as any information about a natural person identified or identifiable to the person concerned (article 4.1 RGPD). And it defines treatment 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, dissemination or any other form of enabling access, access or interconnection, limitation, deletion or destruction" (article 4.2 RGPD).

Therefore, in view of these definitions, the communication of the personal information of public employees who occupy the jobs of the SAC is a processing of personal data that must be subject to the provisions of the RGPD.

With regard to the processing of personal data, article 5.1 of the RGPD includes the principle of legality according to which the processing of personal data must be lawful, loyal and transparent in relation to the interested party, and, because a processing to be lawful must be based on one of the legal bases established in article 6.1 of the following RGPD:

"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."

In the following sections we will analyze whether there is a legal basis for this treatment.

III

We can advance that the processing of the personal data of the people who hold jobs in the SAC, with regard to their communication to postal employees or other courier companies or their inclusion in the corresponding accusations of receipt or applications of these companies, which is raised in the consultation, can be based on more than one of the assumptions provided for in article 6.1 of the RGPD.

In relation to the delivery of postal items (letter or postal package), it will be necessary to take into account the provisions of Law 43/2010, of December 30, on the universal postal service, users' rights and the postal market, and the Regulation regulating the provision of postal services (hereafter, RSP), approved by Royal Decree 1829/1999, of December 3.

Article 16 of Law 43/2010 establishes that "the operator appointed to provide the universal postal service must provide the sender of any certified shipment, at his request and upon payment of the corresponding amount, a proof of its admission, which states the date and time of presentation, as well as the reception by the recipient of the shipment. The rest of the operators, when they voluntarily offer certified services to users, must do so under the conditions established in the previous paragraph."

Article 32 of the RSP, relating to the general rules that must govern the delivery of postal items, specifies that:

"1. Postal shipments must be delivered to the addressee listed in the address of the shipment or to the authorized person at the address of the same, in mailboxes, in post office boxes, in the office, as well as in any other place that is determined in this Regulation or by Order of the Ministry of Development.

The recipient will be understood to be authorized to receive the postal items, unless there is an express prohibition, the older persons present at their home who are their relatives or maintain a relationship of dependency or cohabitation with them.

The recipient or the authorized person who takes charge of the postal shipment will have to identify his personality, before the employee of the postal operator who makes the delivery, by showing his national identity document, passport, driving license or residence card, save notorious conocimiento del same. (...)"

And article 33 of the RSP specifies that "when it comes to certified shipments or with declared value, they may only be delivered, against receipt, to the respective recipients or to the authorized person, it being understood that the persons indicated in article 32.1 of this are authorized Regulations."

In accordance with these precepts, the delivery of certified postal items accompanied by an acknowledgment of receipt requires the identification of the addressee or the person authorized to take charge of the postal item.

The provision for identification of the recipient provided for in the aforementioned Law 43/2010, constitutes in accordance with article 6.1.c) of the RGPD ("The treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment"), a legitimate basis for the treatment su

But in addition, this data processing must be considered necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the data controller (Article 6.1.e) RGPD), insofar as the regulations of administrative procedure attributes to public administrations the implementation and management of the general records of entry and exit of documents, which act as a control mechanism and guarantee of the receipt of administrative documentation.

Consequently, the personnel who provide service in these units of the public administrations will have to perform those tasks, related to the reception of administrative documentation, in accordance with the instructions they receive from their superiors, the administrative procedure regulations and the rest of regulations that are applicable, that are necessary for the fulfillment of this mission in the public interest.

It cannot be forgotten that the staff of the SAC will be subject to the regulatory regulations of the public function and, among them, to the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the public employee, which establishes as the duties of public employees, diligently carry out the tasks assigned to them, as well as look after the general interests with subjection and observance of the Constitution and the rest of the system legal (article 52 EBEP), and as principles of conduct, among others, that the performance of the tasks corresponding to their workplace must be done diligently (article 54.2 EBEP) and that they must to obey the professional instructions and orders of superiors, unless they constitute a clear violation of the legal system (article 54.3 EBEP).

In view of these considerations, the SAC staff who are assigned the functions of serving the public and receiving documentation and correspondence, among others, could not refuse to provide their identity to the person they are assisting in practice of these functions.

In this sense, it should be taken into consideration that article 53.1.b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC) recognizes the right of the persons interested in the procedure administrative to "identify the authorities and staff at the service of the public administrations under whose responsibility the procedures are processed" (article 53.1.b) LPAC).

Under the protection of this provision, it must be understood that the right is recognized for any person who addresses a public administration for any procedure or management (whether to make a query, request information or present documentation) to identify the person who served you by their first and last name and, if applicable, their position or job.

It cannot be forgotten either that the transparency legislation recognizes, in general, the right that allows anyone access to documents that contain merely identifying data of the people involved due to their status as public employees, with the the only exception is that there are circumstances that are asserted by the owner of the data that may make their protection prevail.

Thus article 24.1 of Law 19/2014, of December 29, on transparency, access to public information and good governance, establishes that: "Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights must prevail".

As this Authority has highlighted, previously, for all in the IAI report 29/2018, which can be consulted on the website www.apdcat.cat "The data relating to the name and surname of municipal employees of the City Council are merely identifying personal data directly related to the organisation, operation or public activity of the body (...) it can be concluded that the right to data protection would not prevent access to the identifying data of workers as long as the hearing procedure provided for in article 31.1 of the LTC has been carried out and no reason has resulted from this procedure that could justify the denial of access".

IV

Now, having determined the legality of the treatment, it is necessary to analyze, in view of the rest of the principles of the RGPD, which personal data should be provided, in the case raised in the query, to the people who request the identification of SAC employees.

According to article 5.1.c) of the RGPD, personal data will be "Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (minimization of data). Consequently, this principle of minimization will involve analyzing for each specific case which personal data of these public employees are necessary to achieve the intended purpose.

As stated, in accordance with article 16 of Law 43/2010 of December 30, on the universal postal service, users' rights and the postal market, and articles 32 and 33 of the RSP, the delivery of certified postal items that are accompanied by an acknowledgment of receipt requires the identification of the addressee or the person authorized to take charge of the postal item (as would be the case of SAC workers who have been assigned these duties). In accordance with the wording of this article, the identification of the person in charge of reception by the recipient is carried out, in this case, through the display of the DNI before the employee of the postal operator who, subsequently, will note it in the corresponding acknowledgment

As a consequence of the wording of the article, it could be appropriate to the data protection regulations to indicate in said accusation the name and surname of the person who is in charge of the reception and their ID number, despite the fact that, in principle, the inclusion of the DNI number alone could be sufficient to uniquely identify it.

The RDP also regulates a specific case regarding the delivery of notifications from administrative and judicial bodies to public bodies. Thus article 44 of the RDP establishes:

1. In the case of delivery of notifications to legal persons and public bodies, the rules established for the admission and delivery of notifications in the previous articles will be observed, with the peculiarities established in this article. (...)

3. The delivery of notifications to public bodies will be made to an employee of the same, making it appear in the documentation of the employee of the postal operator and, where appropriate, in the notice of receipt that accompanies the notification, his identity, signature and date of notification, also stamping the seal of the public body. Likewise, they may be delivered to the General Registry of the public body in question, it being sufficient, in this case, to stamp the corresponding entry stamp on the documents cited in the previous paragraph.

In such a way that, in accordance with the procedure established in this article, in the delivery of notifications from administrative and judicial bodies to public bodies, it must be stated in the acknowledgment of receipt that accompanies the notifications (a aside from the date and time of delivery) the signature, and the identification of the worker who takes care of it (in the terms we have explained in relation to certified mail) in addition to the town hall stamp.

However, the final section of article 44.3 of the RSP provides for the possibility of delivering said notifications through the General Registry of the public body in question, so that when suitable documentation is presented to be registered (it would not be if it is certified mail or is presented in a sealed envelope) it will be sufficient to "stamp the corresponding entry stamp on the documents cited in the previous paragraph" in the documentation of the employee of the postal operator and in the acknowledgment of receipt, which must include the registration number, office, date and time of presentation of the notification.

Therefore, it must be borne in mind that, if the notifications of administrative and judicial bodies are delivered to the City Council's registration office, it will not be necessary to provide the identification data of the personnel who occupy this job in order to to include them in the acknowledgment of receipt, given that it is sufficient, in this sense, to include the entry regis

This is without prejudice to the fact that, in the event that the employee of the postal operator requests the identification of the person from the general register who serves him, the SAC employee must provide him with his first and last name and, where appropriate, the position

In accordance with the considerations made in this report in relation to the query raised, the following are made,

Conclusions

The request by employees of post offices and other courier companies for the identification data of SAC personnel (name and surname and ID number), for the purposes of having them recorded in the accusations of receipt of the delivered documentation, would be legitimate in accordance with data protection regulations.

It will not be necessary to provide the aforementioned identification data, in the case of notifications by administrative and judicial bodies of documentation submitted in the General Registry suitable for registration, in which case it will be sufficient to include the seal of the City Council.

Barcelona, July 16, 2019

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