

CNS 34/2019

Opinion in relation to the query made by a city council on a citizen's request that her financial data not be consulted

A consultation by a town council is presented to the Catalan Data Protection Authority regarding a citizen's request that her financial data not be consulted.

In the letter of inquiry, the city council explains, as antecedents, that it received a request from a citizen with the following text: "I request not to enter my personal data. I do not authorize the City Council to consult my financial data", and that this request is part of the procedure of Law 24/2015, of July 29, on urgent measures to deal with the emergency in the field of 'housing and energy poverty. In accordance with this rule, the supply companies issue a monthly list of the people in the municipality who have outstanding debts so that Social Services can issue a report on the vulnerability or not of the affected people.

As a result of this request, the city council raises the following questions:

- "-What should be the answer we have to give to the citizen, should this request be accepted or not?**
- If they love each other, how should we do it?**
- What system, mechanism, and how should it be done to inform all workers, or only those who carry out this procedure, in case it is estimated, so that in the face of any query that affects this citizen we have take into account the request expressed."**

Attached to the inquiry, in addition to the aforementioned instance, is the request form that the city council sends to the affected people, in which they are informed of the request for a report by the supply companies 'energy, on the situation of risk of residential exclusion and vulnerability in accordance with articles 6.4 and 5.10 of Law 24/2015, of 29 July. In this communication, the city council requires the people affected to provide the documentation corresponding to the unpaid invoices and the payslips corresponding to their income; and warns them that, in the event of non-presentation of the required documentation, their financial data will be consulted by the City Council "via electronic means in the official registers, under the ninth additional provision of Law 4/2016, of December 23 (..)

In compliance with the provisions of paragraph 1 of article 9 of Law 24/2015, Social Services will issue the report in accordance with the data consulted that may be more unfavorable for you, and therefore, the lack of col collaboration with the administration due to the lack of presentation of the indicated documentation, implies the waiver of any benefit that may derive from the situation of vulnerability."

Having analyzed the query, in accordance with the report of the Legal Counsel I issue the following report:

I

(...)

II

In the case at hand, the city council states that it would have received from a supply company a notice of non-payment by a person from the municipality and would have initiated the procedure for issuing the corresponding report to determine whether the person or the family unit is in one of the risk situations of residential exclusion determined by article 5.10 of Law 24/2015, of 29 July. The City Council would have required the affected person to send the financial information necessary for its preparation, with the warning that if he did not present the aforementioned documentation, his financial data would be consulted by the City Council under the auspices of the ninth additional provision of Law 4/2016, of 23 December, on measures to protect the right to housing for people at risk of residential exclusion.

Faced with this request, the affected person submitted a letter to the city council stating that "I do not authorize the City Council to consult my financial data", and with respect to this request, the city council raises doubts about whether it should whether or not to respond to this request and how to proceed accordingly.

In order to focus the answer to the doubts raised, it is necessary to take into account, first of all, that according to the regulatory framework applicable to the field of social services, the right of access to benefits and social aid is based on consent and the free request and acceptance by the interested parties.

Thus, according to article 24 of the Statute of Autonomy of Catalonia (EAC).

"1. All people have the right to access under equal conditions the benefits of the social services network of public responsibility, to be informed about these benefits and to give consent for any action that affects them personally, in the terms established by the laws (...)"

In line with what the EAC has, according to article 10.c) of Law 12/2007, of 11 October, on social services (LSS), in the field of social services all people have right to receive prior information in relation to any intervention that affects them so that, where appropriate, they can give their specific and free consent.

So, for the purposes that concern us, we can advance that people affected by situations of energy poverty risk must be able to access the benefits and aid provided for by Law 24/2015, of July 29, on urgent measures to face the emergency in the field of housing and regulatory energy poverty, if they consider it appropriate, since this is how the right of access to social services and benefits is configured by statute.

Under the protection of this principle, the regulations governing this type of benefits must be interpreted.

III

The ninth additional provision of Law 4/2016, of December 23, on measures to protect the right to housing of people at risk of residential exclusion, establishes the following:

"1. The public administrations that, under the protection of this law and Law 24/2015, must adopt measures to attend to cases of residential exclusion and energy poverty, in order to guarantee the right to 'housing and the basic supplies of drinking water, electricity and gas, can collect and process all the personal data that is necessary and appropriate, without the need to obtain the consent of the affected person for the communication of these data. (...)"

This rule would enable the competent administrations to collect and process "all the personal data that is necessary and appropriate" to achieve the intended purpose of adopting measures to address the cases of residential exclusion and energy poverty that it foresees, without the need for the consent of the affected persons.

In order to determine the data that are adequate and relevant in terms of addressing cases of energy poverty, it is necessary to analyze the procedure provided for in Law 24/2015, of July 29, on urgent measures to face the emergency in the area of housing and energy poverty and the purpose pursued under the principles and guarantees of the data protection regulations (Regulation (EU) 2016/679, of the Parliament and of the European Council, of 27 d April 2016, General Data Protection Regulation (hereinafter, RGPD) and Organic Law 3/2018, of December 5, on Personal Data Protection and Digital Rights Gua This Law establishes mechanisms to detect situations at risk of energy poverty and imposes certain obligations on supply companies prior to service supply cuts in the event of non-payment. Thus, article 6 provides the following:

"1. Public administrations must guarantee the right of access to basic supplies of drinking water, gas and electricity to people and family units at risk of residential exclusion, in accordance with article 5.10, while during this situation. In the case of gas, the right of access is only guaranteed if the affected building has this type of supply.

2. As a precautionary principle, a mandatory protocol for communication with social services and intervention by these services must be established prior to the granting of the necessary aid to avoid supply cuts, in cases of non-payment due to lack of financial resources of the affected families.

3. The public administrations must establish the necessary agreements or conventions with the drinking water, gas and electricity supply companies to guarantee that they grant lost funds to people and family units at risk of 'residential exclusion or they apply very significant discounts on the cost of minimum consumption.

4. In order for the precautionary principle established by section 2 to be applied, when the supplying company has to make a supply cut, it must first request a report from the municipal social services to determine whether the person or the family unit is in one of the risk situations of residential exclusion determined by article 5.10. If these requirements are met, the basic supplies must be guaranteed in accordance with what is established in section 1 and the necessary aid established in section 3 must be applied in order not to generate a debt to the person or the family unit.

5. The supplying company must inform, in any notice or communication that refers to the lack of payment for the service, the rights related to energy poverty established by this law, in accordance with what is established in article 17.6 of Law 22/2010, of July 20, of the Consumer Code of Catalonia."

Compliance with the provisions of article 6 transcribed must involve a flow of information between the supplying companies and the competent public administration in the field of social services, and also, as far as we are concerned for the purposes of the consultation, between the social services of the City Council and the supplying company.

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, fair and transparent in relation to the interested party. For a treatment to be lawful, it must be based on one of the legal bases established in article 6.1 of the RGPD.

In accordance with article 6 of Law 24/2015, before proceeding with a supply cut, the company "must request" a report from the municipal social services, in order to determine whether the risk situation described in article 5.1 of the same rule. The authorization for data processing could therefore be found in article 6.1.e) of the RGPD in relation to Law 24/2015.

The flow of information consisting in sending the report of the competent social services to the supplying company is a requirement of article 6, sections 1 and 3 of Law 24/2015, in accordance with the powers and functions attributed to the social services of the municipality and, therefore, a lawful treatment in accordance with article 6.1.c) of the RPDG ("the fulfillment of a legal obligation applicable to the person responsible for the treatment") and article 6.1 .e) of the RGPD ("the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller").

The scope of the information that must be communicated to the supply companies was analyzed in CNS Opinion 64/2016, according to which:

"Given the regulations studied and the purpose of the report (to ascertain whether or not an assumption of article 5.10 of Law 24/2015 is met, and, consequently, if it is necessary to avoid a service supply cut or apply other measures legally provided for), the social services must communicate to the company the minimum necessary personal information, that is to say, they must only give a positive or negative response to the concurrence of the legally provided assumption to prevent a cut in the supply of a service in a specific address or take the measures provided for (6 Law 24/2015).

(...)

The assumption that the social services must verify in the report (art. 5.10 Law 24/2015), takes into account the income level of the affected persons (IRSC, or sufficiency income indicator), if the affected person lives alone or not, and if there are, among the people affected, some with major disabilities or with a major dependency. In addition, article 5.13 of Law 24/2015, referring to cases of energy poverty, provides that "the protection measures regulated by this law also apply to households in which, despite the family unit not meeting the requirements that is established in section 10, there is a person affected by energy dependency living there, as in the case of people who need assisted machines to survive."

Given this, it is clear that the social services report could contain, in some cases, a socioeconomic profile of the people affected, information on situations of vulnerability and precariousness, health information, as a whole, information specially protected for the purposes of the data protection regulations.

In any case, for the purposes of the communication regime, there would be sufficient authorization (art. 6.4 Law 24/2015) for the social services to inform the company about whether or not the affected person is in the case provided for in the article 5.10 of Law 24/2015, for the appropriate purposes (whether or not to cut off the supply or, where appropriate, apply the corresponding measures under the terms of Article 6 of the same law), without requiring the latter's consent.

From here, the information they may need in order to prepare the relevant report can be collected directly from the interested parties themselves or, through the mechanisms established in article 28 of the Law 39/2015, of October 1, on the Common Administrative Procedure of the Administrations Public (LPAC), according to which:

"Article 28. Documents provided by those interested in the administrative procedure. 1. Those interested must provide to the administrative procedure the data and documents required by the Public Administrations in accordance with the provisions of the applicable regulations. Likewise, interested parties may provide any other document they deem appropriate.

2. Those interested have the right not to provide documents that are already in the possession of the current Administration or have been prepared by any other Administration. The acting administration may consult or collect said documents unless the interested party opposes it. There will be no opposition when the provision of the document is required in the framework of the exercise of sanctioning or inspection powers.

The Public Administrations must collect the documents electronically through their corporate networks or by consulting data brokerage platforms or other electronic systems enabled for this purpose. When it comes to mandatory reports already drawn up by an administrative body other than the one processing the procedure, these must be sent within ten days of the request. Once this deadline is met, the interested party will be informed that they can submit this report or wait for it to be sent by the competent body.

Therefore, the LPAC, after establishing that those interested must provide the data and documents required by the Public Administrations to the procedure, recognizes the right not to provide those documents that are already in the possession of the administration acting or have been drawn up by any other administration. In this case, the acting administration may consult them, unless the interested party has objected to this consultation or it is documentation necessary for the exercise of sanctioning or inspection powers.

However, focusing for the purposes of the consultation on the flow of information between the City Council and the supplying company, it should be borne in mind that the cases related to the non-payment of a service in a home can be very diverse, as well as the situation of the affected persons, and therefore it may be the case that, simply, the affected persons are not in the case provided for in article 5.10 of Law 24/2015, that they are in the case indicated and wish to receive the relevant aid, or who are in the said case but do not wish to receive the aid or be subject to the measures provided for in Law 24/2015.

This should lead us to distinguish, in order to respond to the query formulated, two situations: on the one hand, the possibility of accessing what is requested by the person to whom the query refers in cases where the affected person does not want to take advantage of the aid system provided for in Law 24/2015; on the other hand, the possibility of accessing it if the affected person wants to take advantage of this aid system.

IV

It should be borne in mind that the ninth additional provision of Law 4/2016, clearly stating the principle of minimization (art. 5.1.c) RGPD), enables the City Council to process data that "are necessary and appropriate".

Taking into account the voluntary basis of the acceptance of a certain person to this aid scheme, as set out above, at first the only data that would be necessary to treat, as necessary and appropriate data for to achieve the purpose defined by Law 24/2015, are those that would allow social services to contact the affected people before a supply cut occurs.

In the event that, once this contact has been made, the affected person does not want to take advantage of the aid offered, it would not seem justified that the City Council should deal with, nor should it include in the report requested by the company provider any financial or other information about the affected person, beyond the fact that the person did not want to take advantage of the

Article 21 of the RGPD regulates the right of opposition in the following terms in its first section:

"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of), including the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves legitimate reasons

imperative for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims.”

~~The configuration of the right of opposition in the RGPD imposes on the data controller the burden of proving that there are legitimate reasons that justify the continued processing of the data, and that these reasons prevail over the rights and interests derived from the situation particular of the affected person who opposes the treatment. Otherwise, if the person in charge does not certify these elements, he will have to stop processing the data.~~

In the case at hand, the treatment is based on the authorization provided for in article 6.1.e), with which the right of opposition would apply and in the event that the affected person does not wish to receive -is in the aid system, his personal situation would justify that the City Council should not have access to his personal data, beyond his contact details. On the other hand. The City Council does not present compelling legitimate reasons to justify the processing of the data in cases where the citizen does not want to take advantage of the aid system.

In this case, that is to say, when the citizen has already expressed his will not to take advantage of the aid, it seems clear that the answer to the opposition request of the person to whom the query refers must be positive. In other words, the City Council should not consult or provide the supplying company with financial or other personal data, beyond notifying it of the refusal to take advantage of the aid system.

v

A different case is if, once the possibility of taking advantage of the aid is offered, and the person affected has expressed his wish to take advantage of it, he objects to it being consulted and transmitted to the entity provider of your data.

As we have explained, article 21 RGPD recognizes the right of interested parties to object to the processing of their personal data when the processing is based on a mission carried out in the public interest or the exercise of public powers conferred on the person in charge, or in the legitimate interest pursued by the data controller or by a third party, as a result of reasons related to your particular situation.

In this sense, although it is true that the instance presented does not state the reasons related to his personal situation that underpin the request, it should not be forgotten that the RGPD has reversed the burden of proof in such a way that it is the administration acting which must certify the legitimate reasons that would justify the processing of the data.

In the event that the citizen states that he wishes to take advantage of the aid system provided for in Law 24/2015, and in the absence of any other justification regarding the personal situation affected, it must be borne in mind that the social services must make the necessary checks prior to being able to recognize the benefits provided for in the aforementioned Law 25/2014 to the affected

Regardless of whether the affected person can personally provide certain data that can be taken into account to draw up the report, the social services must take into account

also any other information that may be relevant for these purposes. The exercise of the right of opposition will have the consequence, in this case, that the social services of the city council do not have the necessary information to issue a positive report that allows it to be determined that it is in the cases provided for in the article 5.10) in relation to article 6 of Law 24/2015, of 29 July.

For this reason, and in response to the second question posed in the consultation, although the right of the citizen to object to the processing of their data can be recognized, it would be appropriate to inform them of the consequences that their opposition, since the refusal to allow the consultation may prevent the City Council from ascertaining the situation of risk of residential exclusion.

With regard to the internal mechanism to inform the employees of the municipal social services that the right of opposition has been recognized, and to the extent that the opposition to the processing of the applicant's data is focused only on the procedure for energy poverty risk situations of Law 24/2015, the measures that the city council must take to guarantee the exercise of this right of opposition, which may vary depending on the organizational systems implemented, will only affect the staff in charge of its processing.

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

Conclusions

When a citizen does not want to take advantage of the aid system provided for by Law 24/2015 on energy poverty, he can object to having his financial or other data consulted for the preparation of the report referred to in article 6.4 of Law 24/2015.

When the citizen wants to take advantage of the benefits established by this Law, the citizen can also object, although in this case it is appropriate to warn him of the consequences of his opposition, given that it may prevent access to social services to information necessary to be able to make a positive report on your situation of risk of residential exclusion.

The city council must take the necessary measures to ensure that the staff in charge of processing the procedure exercise this right of opposition.

Barcelona September 10, 2019