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Opinion on the query made by the data protection officer of a town hall on the publication of data related to the declarations of activities, causes of possible incompatibility and of patrimonial assets made by elected municipal officials.

The data protection representative of a city council formulates a query on the publication of data related to the declarations of activities and possible causes of incompatibility and of patrimonial assets made by elected municipal officials.

In particular, it is stated that on the occasion of the 2019 municipal elections, all the effects have presented their respective declarations, and given that these declarations must be published, the question arises as to how the personal data they contain should be treated, especially in cases where elected officials have provided income statements, where their own personal data and that of third parties appear.

After analyzing the query, and in accordance with the report of the Legal Counsel, I issue the following opinion.

I

(...)

II

Article 4.1 of the RGPD defines personal data as "any information about an identified or identifiable natural person ("the data subject")", and considers as an identifiable natural person "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person ."

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency). In order for the processing (in this case publication) of the personal data contained in the declarations made by the elected officials to be lawful, one of the conditions provided for in article 6 RGPD must be met, and in the case of categories special data must also take into account the provisions of article 9 RGPD.

In accordance with article 6.1 of the RGPD, in order to carry out a treatment, it is necessary to have a legal basis that legitimizes this treatment, either the consent of the affected person, or any of the other circumstances, such as "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c) or

that "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" (letter e).

As can be seen from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD), the treatment of data can only be considered based on these legal bases of article 6.1. c) and e) of the RGPD when so established by a rule with the rank of law.

III

Article 75.7 of Law 7/1985, of April 2, regulating the bases of the local regime (hereafter, LRBRL) provides the following:

The local representatives, as well as the non-elected members of the Local Government Board, will make a declaration on the causes of possible incompatibility and on any activity that provides or can provide economic income.

They will also prepare a declaration of their assets and participation in companies of all types, with information on the companies in which they participate and the self-assessments of taxes on income, assets and, if applicable, companies.

Such declarations, made in the models approved by the respective plenums, will be carried out before taking office, on the occasion of termination and at the end of the mandate, as well as when the circumstances of fact change.

The annual declarations of goods and activities will be published on an annual basis, and in any case at the end of the mandate, in the terms set by the Municipal Statute.

Such declarations will be entered in the following registers of interests, which will have a public character: a) The declaration on causes of possible incompatibility and activities that provide or may provide economic income, will be entered in the Register of Activities established in each local entity.

b) The declaration of assets and patrimonial rights will be registered in the Register of Patrimonial Assets of each local entity, in the terms established by its respective statute.

(...)

This precept obliges the elected officials or non-elected members of the Local Government Board to submit separate declarations, one on causes of possible incompatibility and activities that provide or may provide economic income, and another on assets and patrimonial rights, according with the models approved by the respective m

In the event that the corporation does not have a formalized model, it will be necessary to adhere to the provisions of article 31 of the Regulation on organization, operation and legal regime of local entities, approved by Royal Decree 2568/1986, of 28 of November (hereinafter, ROF):

"1. The declaration of interest can be instrumented in any kind of document that certifies the date and identity of the declarant and its content, which, in any case, must include the following points:

a) Identification of the movable and immovable goods forming part of the personal heritage, with designation, if applicable, of its registration, and date of acquisition of each one

b) List of professional, commercial or industrial activities and occupations, employment and other sources of private income, with specification of their scope and character and of the jobs or positions held in private entities, as well as the number or reason social of the same.

c) Other interests or private activities that, even if they are not likely to provide income, affect or are related to the scope of the Corporation's powers.

2. In the event that the declaration is formulated in a standardized format approved by the Corporate Plenary, it will be signed by the interested party and by the Secretary in his capacity as municipal public notary."

The LRBRL obliges the City Council to publish these statements annually and in any case at the end of the mandate, under the terms set by the Municipal Statute.

In turn, article 11.1 of Law 19/2014, of December 29, on transparency, access to information and good governance, obliges the Administration to publish: "b) Remunerations, assets and the assets of the members of the Government, of the senior positions of the Public Administration and of the management staff of the public bodies, societies, foundations and consortia, and the compensations they must receive when they cease to exercise their position."

For these purposes, they are considered high-ranking officials in the service of the local administration, local representatives and the holders of superior and managerial bodies, in accordance with what is established in the local regime legislation (article 4.2.b) of the 'LTC).

Law 19/2014 does not specify, however, which personal data must be disseminated for the purposes of complying with this obligation of active advertising. It only points out, in its article 56.2, that "the Register of declarations of activities is public. Access to the registers of declarations of patrimonial assets and interests is governed by their specific regulations, without prejudice to which a declaration indicating the patrimonial situation of senior officials must be made public, which must not "include location data or those that are necessary to safeguard the privacy and security of the holders."

From all this, it can be concluded that article 75.7 RBRL - specific reference regulation obliges local bodies to publish the annual declarations of activities and assets, but leaves it in the hands of the plenary sessions of the town councils to decide which declaration models they have to be used by the Town Councils (which must have the minimum content referred to in article 31 ROF), and it is referred to the municipal statute in order to set the terms in which the publication must be made.

The transparency legislation obliges to publish information on assets and activities (Article 11. 1. b) LTC of senior officials, without more concreteness than that provided for in Article 56.2 LTC regarding the publication of declarations on the patrimonial situation of these people and their limitations.

In the event that there is no municipal regulation that has set the terms in which the respective declarations must be made public, and in accordance with article 8.1 h) of State Law 9/2013, the provisions of the regulations on conflicts of interest in the field of the General Administration of the State. Article 21 of Law 3/2015 is limited to providing in section 5 the obligation to publish in the BOE the declarations of assets and patrimonial rights establishing the same limitations referred to in articles 56.2 LTC and 8. 1 h) of Law 19(2013).

From all this, it can be concluded that neither the specific local legislation, nor the transparency legislation seems to require the publication of the full statements presented by the elected officials, and that the obliged subjects have a certain margin of action to decide what information will be published, with the understanding that the information that is published must comply with the objective or purpose of transparency that is intended with said publication, and in any case respect the specific limitations foreseen with respect to the publication of statements of goods to which we will refer in the legal basis V.

For the purposes of complying with the data protection regulations, remember that the principle of data minimization (Article 5.1.c) of the RGPD requires that the data subjected to treatment be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. Under the protection of this principle, the personal information that is published must be strictly necessary to fulfill the purpose of transparency pursued.

Based on these premises and given that no information is available on the specific content of the respective declarations, nor is there evidence that the terms in which their publication must proceed have been set, they are exposed to below are the general criteria that must be taken into account, given the nature, regulatory specificity of both types of declarations and their purpose.

IV

With regard to the declarations of patrimonial assets and participation in companies of all types referred to in article 75.5 LRBRL, it is foreseeable that these will contain numerous personal information revealing the social and economic-financial circumstances of the people affected.

Thus, apart from the identifying data of the person declaring (name, surname, ID number and signature), it is necessary to count on the inclusion of properties or possessions, including real estate, vehicles and other movable property of special value, the shares in companies of all types, bank accounts and deposits, life insurance, pension plans, miscellaneous income, rights derived from intellectual or industrial property, etc. debts, and information on the settlement of taxes -income, property and companies-.

The volume of personal data that can be included in a declaration of this type makes it possible to draw up an economic profile of the person making it, as well as to evaluate certain aspects of their behavior, such as the consistency of their public performance, in relation to their action in the private sphere, as would be the case of the investments carried out.

As explained in the previous rationale, the obliged subjects have a certain margin of action to decide the degree of concreteness of the information they publish. In this sense, the published information could refer to the total amount of the assets and liabilities of the person declaring, without any other additional data, beyond differentiating the amount that corresponds to immovable property from that corresponding to other movable property and rights), or more extensive and detailed (specifying the type of property declared (flat, premises, farm, vehicle, boat, etc.) or the company in which they have shares.

In any case, the following must be taken into account:

Article 75.7 of the LRBL establishes that, in cases where the personal safety or that of your property or business, or that of third parties, may be threatened, the declaration of your property and patrimonial rights can be registered in the Special Register of patrimonial assets, and provide the secretary of the respective entity with a mere certification certifying that the declarations have been formalized before the secretary of the provincial council or, where appropriate, before the competent body of the autonomous community.

In turn, articles 56.2 of the LTC and 8.1. h) of Law 13/2013, expressly provide for the omission of data on the location of the goods and those that are necessary to safeguard the privacy and security of the owners. Therefore, the information to be published must not include the data on the location of the goods, and the rest of the information whose disclosure could pose a risk to the personal safety of the persons declaring or of third parties. This circumstance is expressly provided for in article 24.2.d) of the LTC.

Beyond these specific limitations, it should be noted that in the event that the statements contain data considered to be particularly protected for the purposes of Article 23 of the LTC, their disclosure will need to be limited.

Remember that according to article 7.1 of the LTC, "the limits applicable to transparency obligations are the same as those established by Title III for the right of access to public information, especially those relating to the protection of data."

In the consultation, reference is made to the personal data of the same declarants and of third parties who appear in the income declarations provided by the elected officials (such as spouse and/or their descendants).

Warn that the contribution of the self-assessments of taxes on income, wealth or, where appropriate, of companies required by article 75.7 of the LRBL together with the declaration of

patrimonial assets is intended to certify the declared patrimonial situation, and in no case should it be the subject of publication.

Beyond the information that refers to legal entities to which the data protection regulations are not applicable, it must be taken into account that what must be submitted to publicity are the assets and patrimonial rights of the high official, and therefore, the publication of the identity of the other natural persons (spouse, descendants, etc.) who may appear in the respective declarations as co-owners of these assets or rights would not be justified.

Add that in application of the principle of minimization (Article 5.1.c) RGPD, it will be necessary to omit the rest of the data that are unnecessary in attention to the intended purpose of its dissemination,

Finally, point out that depending on the declaration model that has been used, it is possible that the relationship about the goods of the persons declaring and their value appears described in detail. This detail in the list of assets, if published in this way, could be excessively intrusive for the privacy of the people affected. For this reason, regardless of the detail of the information contained in the statements, it is important to assess before proceeding with the publication of the information the degree of impact on the privacy of the people affected, as well as the risks it may have the disclosure of said information. This could be the case, for example, if the detail about the value in jewelry, paintings, etc., that an elected official could have declared, disclosure that would be excessively intrusive and could affect their security.

v

Regarding the statements on possible causes of incompatibility and activities that provide or may provide financial income to the elected representatives or non-elected members of the Local Government Board, and given the minimum information that they should in any case contain, according to the article 31 ROF, it is foreseeable that these declarations will contain, at least:

- Identification data of the person signing the declaration.
- Data relating to professional, commercial or industrial activities and occupations, work for others and other sources of private income with specification of their scope and nature, and the occupations or positions in private entities identified by their name or company name.
- Data relating to other private interests or activities that, despite not being likely to provide income, affect or are related to the Corporation's area of competence.

Article 11.1.b) of the LTC obliges the City Council to publish information on the activities carried out by elected officials.

In matters of good governance, article 55.1 of the LTC requires senior officials to act with "impartiality in decision-making, with a guarantee of the necessary conditions for a

independent action and not conditioned by conflict of interest" (d); "the exercise of the position with absolute dedication in accordance with the provisions of the legislation on incompatibilities" (h); "the exercise of the position for the exclusive benefit of public interests, without carrying out any activity that may come into conflict" (i) or "the duty to refrain from intervening in the matters of their competence when con any of the cases of abstention established by the Law occur" (n).

In this context, the City Council must publish the information on the private or public activities declared by the elected officials that allows the public to control the different actions carried out by the elected officials during their mandate, and the knowledge of possible conflict situations of interests, information necessary to guarantee the retention of accounts and the requirement of responsibilities in public management. In order for this to be possible, it is important to inform about the specific area, the company or entity where the different professional or business activities are carried out.

In relation to the information on possible causes of incompatibility, add that article 11.1. d) the LTC obliges to publish "the resolutions issued by the competent body to investigate and resolve the files relating to the declarations of activities, assets and interests of high-ranking officials and the registration in the corresponding registers, in application of the regulations on incompatibilities of the positions."

This Authority dealt with the issue of the publication of the compatibility resolutions in CNS opinions 51/2014 and 73/2016 available on the Authority's website (www.apd.cat). In these opinions it is concluded that in cases where the compatibility of a secondary activity has been authorized or recognized, the transparency legislation, in consideration of the prevailing public interest, would enable the publication of identifying data (name, surname and position) of the affected person, as well as the activity and the company or entity where it is carried out, unless the affected person is in a situation of special protection, a circumstance that would justify carrying out a different weighting.

Warn that the disclosure of information on the professional activities of high-ranking officials cannot be extended to the professional activities that may be carried out by people in the declarant's family environment. This type of information is not subject to the active advertising regime provided for in the transparency regulations and, therefore, in the event that the statements contain this information, their publication cannot be considered lawful for the purposes of the data protection regulations personal You can consult the CNS opinion 3/2019 available on the website (www.apd.cat) in relation to the publication of information on the activities of senior officials.

Beyond that, and taking into account the principle of data minimization, it will be necessary to omit from the information to be published the identifying data of the declarant such as his ID number, his handwritten signature, as well as any other information that may contain statements that are unnecessary to achieve the goal of transparency pur

VI

Finally, remember that in accordance with article 13.1 of the RGPD, when personal data is obtained from the interested party, the data controller must inform them, among other things, of " c) the purposes of the treatment for which the personal data and the legal basis are intend

of the treatment, ie) the recipients or the categories of recipients of the personal data, as the case may be;

Taking this into account, in order to avoid the generation of false expectations of privacy, it would be necessary to inform the people who have presented the declaration about all the points required by article 13.1 of the RGD, including the fact of publication on the web corporate of the information collected in these documents referring to their properties, as well as the information on the professional activities they develop.

It is also recalled that the information published must be truthful and permanently updated (article 6.1.a) ib) Law 19/2014).

CONCLUSION

The obligation to publish declarations of assets and patrimonial rights of elected officials requires the prior omission of data relating to the location of assets and those that are necessary to safeguard the privacy and security of the holders, the data considered especially protected (article 23 LTC), data referring to third-party physical persons (other than the declarant), as well as any other information that may be included in the respective declarations and that is unnecessary to assess the financial situation of the public representative at the beginning and end of his term. In this sense, the disclosure of detailed information about the goods that could represent an excessive intrusion into the privacy of the people affected should be avoided.

Likewise, and for the purposes of complying with the obligation to publish the declarations of activities of the elected officials, it would be necessary to omit the data referring to activities carried out by third natural persons that may appear in these declarations, as well as any data that is unnecessary for achieve the goal of transparency pursued.

Barcelona, July 25, 2019