

CNS 51/2019

**Opinion in relation to the consultation of a City Council on the communication of data from the holders of the licenses to open the premises of the municipality to a private entity**

A letter from a City Council is presented to the Catalan Data Protection Authority in which it considers whether it can hand over to a private entity the data of the holders of the licenses to open the premises of the municipality (mostly rural houses, bars and restaurants), as well as the opening and start data of the activity, taking into account legislative changes in the field of data protection.

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, that it has received from a private entity several requests for access to information on the holders (natural persons) of the licenses to open the premises of the municipality (country houses, bars and restaurants).

Given the latest legislative changes in the field of data protection with regard, specifically, to the processing of data of individual entrepreneurs and liberal professionals, it requests the opinion of this Authority on the origin of delivering the requested information.

We refer to these issues in the following sections of this opinion.

III

At the outset, it should be noted that the considerations made by this Authority in opinions CNS 57/2015 and CNS 63/2016, which the City Council mentions in its consultation letter, can no longer be considered valid, as consequence of the full applicability of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), from May 25, 2018.

In these opinions it was agreed that, in accordance with article 2.3 of the Regulations for the deployment of the (repealed) Organic Law 15/1999, of December 13, on the protection of personal data, approved by Royal Decree 1720/2007, of December 21 (hereinafter, RLOPD), the data relating to individual entrepreneurs (as could be the case of holders of licenses to open premises), strictly linked to their business activity, were not protected by the regulations of protection of personal data. Consequently, it was concluded that there would be no impediments, from the point of view of data protection, to deliver them to a third party.

The RGPD extends its scope of protection to personal data understood as "all information about an identified or identifiable natural person ("the interested party")" (article 4.1).

By virtue of the principle of primacy and the direct effect of the Regulations of the European Union, the internal provisions of the Member States that are opposed to what is established by the RGPD have been displaced by its provisions.

This has been the case of the exclusion provided for in the aforementioned article 2.3 of the RLOPD (treatment of certain data relating to individual entrepreneurs who hold the status of traders, industrialists or shipping companies).

It must, therefore, be borne in mind that any treatment carried out on this data, understood as "any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction" (Article 4.2) RGPD, will remain subject to the legislation on the protection of personal data, as long as the holders of the licenses to open the premises are natural persons.

On the other hand, the data of license holders who are legal entities will be excluded from this scope of protection, as specified by the RGPD itself, by establishing that "the protection granted by this Regulation must be applied to natural persons, regardless of your nationality or place of residence, in relation to the processing of your personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details" (recital 14).

#### IV

The RGPD establishes that all processing of personal data (in this case, the delivery of information relating to the holders - natural persons - of the licenses to open premises in the municipality) 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. Specifically, section c) provides that the treatment will be lawful if "it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

It must be taken into account that, as is apparent 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 the guarantee of digital rights (henceforth, LOPDGDD), data processing can only be considered based on this legal basis of article 6.1.c) of the RGPD when this is established by a rule with the rank of law.

At the same time, article 86 of the RGPD provides that "the personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, body or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile public access to official documents with the right to the protection of personal data under this Regulation."

Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC), aims to regulate and guarantee the transparency of public activity.

Article 18 of the LTC recognizes the right of people to "access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person" (section 1).

Article 2.b) of the LTC defines "public information" as "the information prepared 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".

The information that the City Council has regarding the holders of licenses to open premises in the municipality, included in the corresponding administrative files, is "public information" for the purposes of the LTC and would remain subject to the access regime provided for by this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 et seq.).

Specifically, in those cases where the public information that is sought to be accessed contains personal data (as happens in the case examined), for the purposes of granting or denying access, it will be necessary to take into account the limits established in the articles 23 and 24 of the

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The entity requests access to the data of the holders of the licenses to open premises in the municipality. Although not specified in the query letter, it can be understood that it would be referring to the identification and contact data of these people.

Considering that this is not data deserving of special protection, access to said information will be governed by what is established in article 24.2 of the LTC, according to which:

"2. If it is other information that contains personal data not included in article 23 (data deserving of special protection), access to the information can be given, with the previous reasoned weighting of the public interest in disclosure and the rights of the affected persons. To carry out this weighting, the following circumstances must be taken into account, among others: a) The elapsed time. b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered. c) The fact that it is data relating to minors. d) The fact that it may affect the safety of people."

In accordance with article 18.2 of the LTC, the exercise of the right of access is not subject to motivation, but the fact that the applicant expresses what is the purpose he pursues and, ultimately, the reasons for which is interested in knowing the information may be relevant when deciding on the prevalence between the applicant's right of access and the right to data protection of the affected persons (license holders). In fact, the purpose is one of the weighting criteria indicated by the LTC itself (article 24.2. b)).

In the case at hand, it must be taken into account that the person requesting access is a company that is legally assigned the management of copyrights derived from the use in public establishments of musical, audiovisual and theatrical works, through live performances or in the use of musical performance devices, television and video receivers and similar, by virtue of the Order of the Ministry of Culture of June 1, 1998 (article 2 Statutes, approved by Resolution of Ministry of Education, Culture and Sport of September 27, 2016), and in accordance with articles 147 and 150 of the Consolidated Text of the Intellectual Property Law, approved by Royal Legislative Decree 1/1996, of 12 April (henceforth, LPI).

Article 147 of the LPI, in its wording given by Law 2/2019, of March 1, provides that:

"Legally constituted entities that have an establishment in Spanish territory and intend to dedicate themselves, in their own name or to third parties, to the management of rights of exploitation or others of a patrimonial nature, on behalf of and in the interest of several authors or other holders of intellectual property rights, must obtain the appropriate authorization from the Ministry of Culture and Sport, in order to guarantee adequate protection of intellectual property. This authorization must be published in the "Boletín Oficial del Estado".

The collective management entities are the property of their partners and will be subject to their control, they may not have a profit motive and, by virtue of the authorization, they may exercise the intellectual property rights entrusted to their management by their owners through a contract of management and will have the rights and obligations established in this title and, in particular, make effective the rights to equitable remuneration and compensation in the different cases provided for in this law and to exercise the right to authorize cable distribution."

And article 150 of the LPI, also in its wording given by Law 2/2019, of March 1, provides that:

"The management entities, once authorized in accordance with the provisions of this title, will be legitimized in the terms resulting from their own statutes, to exercise the rights entrusted to their management and enforce them in all kinds of administrative or judicial proceedings. (...)."

Despite the fact that the LPI does not specifically grant an inspection, investigation or audit capacity or power to the management entities (therefore, to (...)), it must be taken into account that it does attribute to them the management of rights by the associated persons.

The fact that, legitimately, an entity such as the one that makes requests for access to the City Council manages certain interests in the name and representation of the authors and other people who hold certain exploitation rights over a work could make it necessary that, for this purpose, he must know certain information, such as that referred to the owners of the premises in which there is a reproduction, distribution and/or public communication of musical, theatrical, cinematographic and/or audiovisual works, including in its repertoire of protected works (as could be the case of the premises open to the public mentioned in the consultation (country houses, bars and restaurants in the municipality).

This type of performance requires the corresponding authorization (the payment of a fee, established depending on the type of establishment, the accessory or primary character of the broadcast and the square meters of the premises), which manages the entity (among others) by signing a contract with the person who owns the premises in question.

Also, in the event that the person obliged to pay this fee does not satisfy him, it would be up to the entity to file the corresponding claim in court.

In view of this, it does not seem that there can be any doubts about the relevance that it could have for the entity to have the requested information about the license holder (identification and contact data).

For the purposes of the aforementioned weighting, it must also be taken into account that the information requested would coincide with that in relation to which the Spanish legislator has provided a specific authorization for its treatment, provided that certain conditions are met.

Thus, article 19.2 of the LOPDGDD establishes a presumption of the existence of a legitimate interest (legal basis provided for in article 6.1.f) RGPD) with regard to access to business contact data individuals and liberal professionals, when these data refer to them solely in this condition and are not processed to establish a relationship with them as natural persons.

By contact data it is necessary to understand, in accordance with article 19.1 of the LOPDGDD, the data necessary for the professional location of the individual entrepreneur or liberal professional, which, in the present case, apart from the name and surname of the holder of the license, could be specified in the address of the premises.

As regards the second condition, to the extent that the use of protected works by the holder of a license to open a premises (that is, by an individual entrepreneur) can be said to give added value to the business or the activity it carries out, it could be understood that the requested data would be used by the entity to contact you within the framework of its business activity.

Considering, therefore, the information requested and the relevance of this information for the exercise of the functions attributed to the entity, it can be concluded that in the present case the right of access of the entity in the name, surnames and the contact details necessary for the professional location of the holders of the licenses to open the premises of the municipality.

Consequently, the delivery of this information by the City Council would remain covered by the legal basis of article 6.1.c) of the RGPD.

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

## Conclusions

The delivery to the entity of the name, surnames and the data necessary for the professional location of the holders of the licenses to open the premises of the municipality, for the purposes of properly managing the copyright of its associates, would find protection on the legal basis of article 6.1.c) of the RGPD, in relation to the provisions of article 24.2 of the LTC.

Barcelona, November 5, 2019