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Opinion on the query made by a town council about a councilwoman's access to the building permits of the last two legislatures.

A city council formulates a query about a councilwoman's request for access to the building licenses of the last two legislatures.

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

I

(...)

II

Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), defines personal data as "all information about an identified or identifiable natural person ("the interested party"); 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 identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person" (article 4.1) RGPD).

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 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 rights

digital data (hereinafter LOPDGDD), data processing 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

The local regime legislation (article 77 LRBRL and article 164.1 TRLMRLC) recognizes a right of access to all elected officials, regardless of whether they are in the government team or in the opposition, to the information available to them local corporation and that may be necessary for the exercise of the functions that correspond to them.

Thus, article 77.1 of the LRBRL establishes that "all members of local corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the services of the Corporation and are necessary for the development of their function".

In the same sense, the TRLMRLC pronounces itself, by providing, in its article 164.1, that "all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."

The right to obtain all the antecedents, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions, in accordance with repeated jurisprudence on this issue (STS September 27, 2002, June 15, 2009, among others), is part of the fundamental right to political participation enshrined in article 23.1 of the Spanish Constitution, according to which "citizens have the right to participate in public affairs, directly or through representatives, freely elected in periodic elections by universal suffrage."

It should be borne in mind that the elected officials participate in a public action that manifests itself in a wide range of specific matters, such as the right to audit the actions of the corporation, the control, analysis, study and information of the necessary antecedents, which have the services of the City Council, for their control task and to document themselves for the purposes of adopting decisions in the future (among others, STS of March 29, 2006).

However, this does not mean that this right of councilors is an absolute right. If it conflicts with other rights, it will be necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

This has come to be recognized by the local regime legislation itself. The mentioned article 164 of the TRLMRLC, in regulating the conditions for the exercise of the right of access to municipal information by the members of the corporations, establishes, as a possible basis for denying the request for information with reasons, that "the knowledge or the dissemination of the information may violate the constitutional right to honor, personal or family privacy or one's image" (section 3, letter a)), but obviously access could also be denied, given the nature of the right to data protection (STC 292/2000), when, regardless of whether certain data can be considered intimate or not, there are other specific circumstances related to personal data that justify it, in particular

under the protection of the principle of data minimization, according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed" (article 5.1.c) of RGPD)).

This principle implies, on the one hand, that access to municipal information that includes certain personal data, without the consent of those affected, must necessarily be linked to the exercise of the functions that correspond in each case to the councilor of whatever it is, in the terms provided for in the local regime legislation. On the other hand, it involves a weighting exercise, in order to assess the implications that, in each case, the exercise of the councilors' right of access to information may have for the rights of the people affected, such as the right to the protection of personal data (Article 18.4 EC).

Local legislation does not require councilors to explain or justify the purpose of their request in order to access municipal information, given that according to repeated Supreme Court jurisprudence, the reason for their request is 'must be understood as implicit in the exercise of the control and inspection functions of the governing bodies of the corporation, as explained in article 22.2.a) of the LRBRL. Even so, in cases where there is information of a personal nature, the fact of explaining the reasons why access is of interest can be an important element to take into account when making a careful weighting between the right of access to councilors' information and the right to data protection of the affected persons.

The Authority points out, as elements to be considered when carrying out this weighting - which corresponds to the City Council, as responsible for the treatment (article 4.7) RGPD)-, the circumstances of the specific case, the personal data contained in the requested documentation, the intended purpose and the terms with which the request is made or the possible subjects affected, among others, as well as the impact or the risks for the people affected.

IV

In this case, the councilor is asking to be able to access and see the building licenses of the last two legislatures.

Planning licenses must be granted in accordance with the provisions of the TRLU, urban planning and municipal ordinances (art. 188 1. TRLU). They provide information necessary to check whether or not a specific action conforms to urban legality, and therefore councilors should be able to access the information that allows them to make these checks.

From here, the City Council, -responsible for the treatment and aware of the personal information contained in the requested documentation-, must ensure that the councilor's access to this data respects the principle of minimization (art. 5.1.c) of the RGPD), providing only those data that are strictly necessary for the councilor to carry out her duties.

Taking into account the strictly regulated and technical nature of urban planning activity - subject to the control and intervention of the autonomous or local administration -, it is foreseeable that access

these documents affect the data of the employees or public officials involved and those of the applicants and/or license holders.

It does not seem that the right of a councilor to obtain information about the employees or public officials responsible for the processing and/or decision on the granting of the respective licenses can raise doubts.

On the other hand, it is reasonable to consider the need or not to obtain information about the identity of the holders and/or applicants of the building permits.

To warn that legal persons are excluded from the scope of protection of the data protection regulations, as specified by the RGPD itself, by establishing that ... This Regulation regulates the treatment of personal data relating to legal persons and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details." (Recital 14). Therefore, from the perspective of the right to data protection, there should be no impediment to providing information on the name of the legal entities that appear in the requested documents.

With respect to the cases in which the holders and/or applicants are natural persons, note that although a generalized access to works licenses granted during two legislatures (eight years) is requested, without further specification, the truth is that it cannot be deduced from this that it is irrelevant to know the identity of the holders of these licenses. If the aim is to detect possible irregularities in the intervention actions of the Mayor's Office when authorizing the different works, it could be relevant to know who has been authorized to do certain works.

Article 84.1 of Decree 179/1995, of 13 June, which regulates the Regulation of works, activities and services of the local entities of Catalonia (ROAS) already foresees that some publicity is given to the agreements or awarding resolutions of the licenses, by arranging that these be published in the manner provided for in the law and in the ordinances of the corporation, and requiring, in any case, that they must be inserted in the notice board and published, when if there are any, in the municipal newsletter.

On the other hand, the recognition of public action in this matter (Article 12.1 TRLUC), allows anyone to contest the various instruments of planning, as well as the acts of their application (the licenses in this case). In urban planning files, all people have the status of interested parties without the need to prove special identification, a fact that could justify access to said information to any person who requested it. This means that the privacy expectations of license holders are limited.

On the other hand, omitting the first and last names of the holders would also not prevent these people from being relatively easily identified. Thus, the identification of the property where the works have been carried out in a municipality with just over 800 inhabitants, in certain cases can be linked to its owner without much effort.

For all that, it does not seem that there could be any inconvenience in providing a councilor with information on the identity of license holders and/or applicants.

It would be appropriate, however, that prior to accessing the documentation, all those data of the holders that are unnecessary, such as the ID number, or any other irrelevant data for the purpose of control and inspection, should be deleted of the actions of the Mayor's Office, claimed by the councilor in this case.

v

In the event that access is sought to the files or to the supporting documentation of the licenses granted, to the information on the public employees involved and on the holders or applicants of the licenses, it would be necessary to add the data of the architects responsible for the projects works done

Based on the premise that the councilors must be able to access, if necessary, the documentation justifying the concession resolution, the truth is that knowing who is the architect who signs the works projects that are authorized could be a relevant data, if what is intended is to verify eventual irregularities on the part of the Mayor's office in complying with urban legality.

From the point of view of the affected professionals, it should be borne in mind that the works projects they sign are subject to the control and intervention of the municipal administration. To the extent that the project is the technical instrument that justifies the granting of the license, those responsible must provide for the eventual transfer of this information to any person who questions the compliance with urban planning legislation regarding the works carried out and/or the action of the administration that authorizes them

Taking this into account, it also does not seem that there should be any inconvenience in providing the councilor with access to the identity of the architect who signs the requested works project.

Beyond this, and as pointed out in the previous rationale, it will be necessary to ensure compliance with the principle of minimization (art. 5.1.c) of the RGPD), and provide only those personal data that can be included in the different files that are strictly necessary for the exercise of the functions of control and inspection of the actions of the governing bodies attributed to the councillors.

Thus, for example, eventual access to the various technical projects of the works carried out would be justified by the fact that it is the technical instrument that provides the necessary information in order to check whether or not the specific action conforms to the law. However, it should be emphasized that this and no other is the purpose of having these documents. Therefore, these should only contain a level of detail that allows to verify compliance with urban planning regulations and at the same time not reveal aspects of the construction that may be linked to the private lives of the people who reside there, and which would be unnecessary.

In any case, at the time of facilitating access, it would be advisable to remind the councilor of the duty of confidentiality regarding this information imposed by both the local regime legislation (article 164.6 TRLMRLC) and the RGPD (article 5.1.f)) , so that the processing it does must always be linked to the exercise of its functions of control and supervision of the municipal action.

conclusion

The right to data protection would not prevent the councilor from accessing information related to the construction licenses granted in the last two legislatures, including the identity of the license holders, and where appropriate, that of the architects responsible for the works projects that justify them.

In accordance with the principle of minimization, it will be necessary to omit, prior to access, any data that is unnecessary for the exercise of control and supervision of the actions of the governing bodies attributed to councillors.

Barcelona, November 22, 2019

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