

CNS 59/2019

Opinion in relation to the query made by a town council regarding the request for documentation by union representatives for services provided by the Urban Guard.

A request for an opinion from a City Council is submitted to the Catalan Data Protection Authority on whether to provide a complete copy of all the signed reports of the daily services of the head of the Urban Guard, from 2019, on duty ordinary, extraordinary and special, where the staff is listed, without name, but with the TIP number it would comply with data protection.

Analyzed the query, which is not accompanied by any document, and seen the report of the Advisory Board Legally, the following is ruled

I

(...)

II

First of all, it should be borne in mind that in accordance with article 4.1) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter , RGPD), means personal data: "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".

So, all those data of public employees, in this case, the members of the urban guard available to the City Council, that identify them and refer directly to the worker or allow their identification (as, in this case, the TIP), as well as those data that may refer more specifically to the workplace they occupy, but which are associated or linked to a specific worker and therefore identify him, are personal data.

Any processing of personal data, understood 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, diffusion or any other form of enabling access, comparison or interconnection,

limitation, suppression or destruction" (Article 4.2 RGD), must be subject to the principles and guarantees of the RGD.

Among these principles that must govern any treatment of personal data provided for in the RGD, the principle of legality (Article 5.1.a) RGD) requires that personal data be treated in a lawful, fair and transparent manner in relation to the interested. When one or more of the conditions provided for in article 6.1 of the RGD are met, it may be considered that the treatment has a legal basis. Specifically, section c) provides that the treatment will be lawful if "it is necessary to fulfill a legal obligation applicable to the person responsible for the treatment".

Article 6.3 of the RGD, establishes that the basis of the treatment indicated in letters c) and e), must be established by the law of the Union, or the law of the member states to which the person in charge of the treatment is subject. The referral to the legitimate basis established in accordance with the internal law of the member states referred to in this article requires, in accordance with article 8 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereafter LOPDGD), that the norm has the status of law.

Therefore, in accordance with this regulation, in order for the City Council to be able to provide certain personal data of the officers of the urban guard, it will be necessary for a rule with the rank of law to enable this treatment (art.6.1.c) RGD).

III

First of all, it must be emphasized that those who make the request to the council are the union representatives, and the data subject to communication correspond to city hall officials. Therefore, it is necessary to take into account, at the outset, the provisions established in Law 7/2007, of April 12, of the Basic Statute of the public employee (hereafter, EBEP).

Thus, in accordance with article 40 of the EBEP, the representative bodies of the civil servants of the city council (staff boards and staff delegates) and always for the exercise of the functions that the law assigns them attributes, among them, to having knowledge and being heard about the establishment of the working day and working hours (section 1.d)) and/or the monitoring and control of compliance with the rules in force regarding working conditions (section 1.e)), have the right to know certain information available to the city council, which may contain personal data of workers.

In addition, without prejudice to what has just been explained, it is necessary to take into account other legal regulations for the purposes of the application of the data communication regime mentioned in the case at hand. It is Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC hereafter) which aims to regulate the transparency

Article 18 of the LTC establishes that "people have the right 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). The mentioned article 2.b) defines "public information" as

"the information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with what is established this law".

The first additional provision, section 2, of the LTC establishes that "access to public information in matters that have established a special access regime is regulated by their specific regulations and, additionally, by this law" .

Given that, as we have seen, the representatives of the workers have a specific regime of right of access to certain information, it seems appropriate to consider that to the request for information presented the provisions must be applied of the TRLEBEP, and, additionally, in what is not provided for by these rules, those of the LTC.

IV

The consultation raises doubts about the possibility of providing the union representatives of the corporation "the complete copy of all the signed reports of the daily services of the head of the Urban Guard, from 2019, for ordinary, extraordinary and special service, where it is stated the staff, without a name, but with the TIP number".

It must be said that it is unknown what the specific content of these reports is or the extent of the information that may be affected. In principle, it should be assumed that there is a list of the different services or tasks performed by the agents during the different shifts and schedules.

From article 40 of the EBEP, there would not seem to be a sufficient legal authorization to communicate this information to the union representatives individually and associated with each member of the urban guard, as they request.

In addition, it should be noted that neither Law 4/2003, of April 7, on the organization of the public security system of Catalonia, nor Law 16/1991, of July 10, on local police, nor the Regulation of the city's local police expressly provide for the communication of individualized information for each worker to the representative bodies.

However, it cannot be ruled out that the obtaining of said information may be relevant for the exercise of the tasks of monitoring and controlling the regulations and/or pacts and agreed conditions. Thus, providing information on the different ordinary, extraordinary or special services carried out in an individualized manner, could be necessary for the trade union representatives to control whether or not the agreed distribution and/or allocation criteria for services are being respected, and to detect any irregular actions that may have occurred when assigning certain services to certain workers or to others.

However, this control task could be done, in principle, without needing to sacrifice the privacy of the affected workers, facilitating an individualized relationship, without including the identity of the workers. In fact, according to the City Council, the information would have been requested without including the first and last name and specifying that the TIP number be facilitated. This indicates that what is of interest is being able to identify the tasks or services assigned to each specific worker throughout the year 2019, regardless of who it is.

The principle of minimization that requires the data to be adequate, relevant and limited to what is necessary for the purpose for which they are processed (Article 5.1.b) of the RGPD). In application of this principle and given the purpose of access in this case, it is considered that the city council could initially provide the information requested with a non-identifiable code, in such a way that it would not be possible to reach to identify the affected workers, that is to say, prior to pseudonymisation of the personal data (article 4.5) RGPD).

Thus, in the event that the volume of the group affected is large, the information could be facilitated prior to pseudonymization of the data, which in the terms of the RGPD can be understood as "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, as long as said additional information is listed separately and is subject to technical and organizational measures aimed at ensuring that personal data is not attributed to an identified or identifiable natural

Pseudonymization is therefore a treatment of information that is subject to data protection regulations, and which consists, for example, of replacing a person's first and last name, or any other identifying data, with a code, so that if there is no additional information, known only to the person who has carried out the pseudonymization, which allows establishing a link, it will not be possible to know who this code corresponds to.

In the case being examined, it must be taken into account that the use of the TIP of each agent cannot be considered suitable to guarantee the privacy of the persons concerned, given that it is a numerical code that can easily be known, without disproportionate efforts, by the rest of the workers in the police stations or even by other people.

For this purpose, it could be sufficient for the city council to initially facilitate the union representatives with the reports only with a fixed numerical code assigned to each member of the urban guard, in such a way that it would be possible to see and control the distribution of these services among this group of workers. This code should be maintained in every communication made in this regard to union representatives, in order to be able to see the types of services performed by each of them, and guarantee this purpose of controlling mu

In order for this code to be effective from the perspective of data protection, it would be necessary to ensure that the identity of the worker is known only to the person who attributes the code, so that the worker is not identifiable to any other person. In this sense, using the ID number or another code that can be known by third parties would not be a good option.

In these terms, and without prejudice to other limits to the right of access that may affect the information requested, the data protection regulations would not prevent access to this information, duly pseudonymised.

This, without prejudice to the fact that, once the information has been obtained, the trade union representatives may present specific reasons that justify their access to the identity of key workers. It would be the case, for example, that certain anomalous or irregular situations were detected in the awarding of services.

Now, in accordance with article 31.1 of the LTC, the request for access should be transferred to the affected worker, so that, within 10 days, he could make the allegations that he considered relevant.

Having said that, note that, in any case, the personal data protection regulations will apply to the subsequent processing of this personal information obtained by the trade union representative through the exercise of the right of access.

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

Conclusions

The data protection regulations would not prevent the provision of reports on the work services performed by members of the urban guard during 2019, as long as this information is provided in a pseudonymised manner, without the direct or indirect identification of the affected workers being possible by third parties.

The use of the TIP of the urban guard cannot be considered appropriate given that it is a numerical code that can easily be known by the rest of the municipal workers. This is without prejudice to the fact that, subsequently, if in view of these reports there are any circumstances that justify it, the City Council may reveal the identity of the affected worker to the union representative, without the need for their prior consent.

Barcelona on January 27, 2020