

CNS 13/2020

**Opinion in relation to the consultation on the possibility of sending a list of all the citizens of the municipality included in the central register of insured persons to a consortium with powers in the field of public health**

A consultation is presented to the Catalan Data Protection Authority in which the Authority is asked to issue an opinion to assess the possibility of sending a list of all the citizens of a municipality included in the Service's central register of insured persons Català de la Salut to an Agency created by a consortium with powers in the field of public health in order to adopt measures to get in touch with citizens at risk in the face of the health crisis situation created by COVID-19. This list would include, according to the query, all the CatSalut insured with residence in the municipality, with first and last name, date of birth, gender, address, EAP assigned, DNI/NIE/passport, CIP number, landline, mobile phone and email

Analyzed the query, which is accompanied by the request made to the Catalan Health Service and a note drawn up by the office of the Data Protection Delegate, and in accordance with the report of the Legal Advice I issue the following opinion:

I

(...)

II

As this Authority already highlighted in the note published last March 16, articles 6.1.e) and 9.2.i) of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27 of 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/CE (RGPD) enable the processing of personal data, including special categories of data such as health data, by public health authorities "when the treatment is necessary for reasons of public interest in the field of public health, such as protection against cross-border threats serious to health, or to ensure high levels of quality and safety of health care and medicines or health products, on the basis of Union or Member State law that establishes appropriate and specific measures to protect the rights and the freedoms of the interested, in particular professional secrecy".

In turn, the seventeenth additional provision of Organic Law 3/2018, of December 5, on data protection and guarantee of digital rights provides that: "They are protected in letters g), h), i) ij) of article 9.2 of Regulation (EU) 2016/679 the treatments of data related to health and genetic data that regulate the following laws and their provisions of

deployment: (..) a) Law 14/1986, of April 25, general health; (...) g) Law 33/2011, of October 4, general public health."

Law 18/2009, of 22 October, on public health, creates the Public Health Surveillance Network which is integrated by the set of epidemiological surveillance units of the Department of Health and among its functions the function of giving " rapid response to public health emergencies and support for the management of the alert system."

Article 23.1.a) of Law 33/2011, of October 4, on general public health establishes that "The health administrations will adopt the necessary measures for the assistance services and those of public health, to establish an effective coordination for develop the following actions:

a) Exchange the information necessary for public health surveillance and on the health situation and its social conditions for a better welfare action of the assigned community."

In particular, it should be taken into account that "All public administrations and competent bodies in matters of public health, as well as all health centers, services and establishments and health professionals, must participate, within the scope of their respective functions , in the Training and Research System in Public Health and in the Public Health Information System. To this end, they must communicate the relevant data to these systems through their responsible bodies" (art. 10.3 of Law 18/2009).

On the other hand, in accordance with Organic Law 3/1986 on special measures in the field of public health, the competent authorities in the field of public health can "adopt measures of recognition, treatment, hospitalization or control when there are rational indications that allow the existence of a danger to the health of the population due to the specific health situation of a person or group of people or due to the health conditions in which an activity is carried out" (art. 2) and in order to control communicable diseases "adopt the appropriate measures for the control of the sick, of the people who are or have been in contact with them and of the immediate environment, as well as those deemed necessary in the event of a risk of a communicable nature."( art. 3)

In this sense, in accordance with article 55.1.j) of Law 18/2009, the health authority, through the competent bodies, and in order to protect the health of the population and prevent disease can "adopt medical examination, treatment, hospitalization or control measures if there are rational indications of the existence of a danger to people's health due to a specific circumstance of a person or a group of people or due to the conditions in which an activity is carried out. Measures can also be adopted for the control of people who are or have been in contact with the sick or the carriers. These measures must be adopted within the framework of Organic Law 3/1986, of April 14, on special measures in the field of public health, and State Law 29/1998, of July 13 , regulating the administrative contentious jurisdiction, and of the legal provisions that modify or repeal them.", in accordance with what is established in the regulations for the protection of personal data and with the procedures that these regulations and the other applicable regulations have established.

The performance of these actions may entail not only the collection of information, including health data, by the public health authorities but also the disclosure of health data relating to people who are infected or suspected of being infected when necessary to apply the aforementioned control measures.

The Central Register of Insureds (hereafter RCA) can collect the identification and contact data of the people registered there with the purpose of providing them with health care, although it is possible that some of the data collected (especially some contact data such as telephone numbers or e-mail address) may not be collected there.

The Public Health Agency of (...), created by the Health Consortium of (...), is the autonomous body that, among its purposes, is the direction and management of public health centers and services in the municipality. Among its functions is "Epidemiological surveillance in the city of (...), and the control of communicable diseases and outbreaks of any cause, with the appropriate interventions".

The PROCICAT Plan, approved by Agreement GOV/40/2020, of March 3, for emergencies associated with emerging communicable diseases with high risk potential, foresees in its section 3.4 municipal emergency plans and determines the responsibilities of the municipality, for in order to mitigate the consequences of an emergency of these characteristics. These are:

- Incorporate the measures to be taken in the event of one into the municipal civil protection plan emergency of this type. Implement it and keep it operational.
- Determine the particularly vulnerable elements.
- Know the means and resources of the municipality.
- Inform the CECAT of the situation in which essential services are found for the operation of the municipality, as well as the state of provision of basic supplies and other essential services.
- Inform the general population.
- Organize municipal volunteers.

In any case, and in the light of the provisions set out above, there would be no problem in being able to communicate to the Agency, within the framework of the determinations of the PROCICAT Plan, data contained in the RCA in order to use them for public health purposes, given that this would be a clearly compatible purpose and would be supported by the aforementioned rules.

However, as set out in the note drawn up by the Office of the Data Protection Delegate of the Catalan Health Service which is attached to the consultation, the existence of a legal basis to be able to carry out the communication does not exempt from compliance with the rest of the applicable principles in the field of data protection, in particular, as far as we are concerned, the principle of minimization, by virtue of which only the data that are appropriate can be treated in this communication relevant and limited to what is necessary depending on the purpose pursued (art. 5.1.c) RGPD.

In the case at hand, the request for information indicates that in order to manage the health crisis situation caused by COVID-19, "it is necessary to identify people with profiles of vulnerability to the disease or to other effects indirect effects caused by the epidemic on your health, such as being left without support for your vital needs, or the effects that transmission may have to neighbors or relatives or other people living with people

infected.". Likewise, he explains that "the monitoring of the most vulnerable people in terms of health for social issues is done by the Social Rights Area, Global Justice. Feminisms and LGBTI from the city council" but that "the City Council (...) does not have a database of all its citizens with telephone or email contact details, beyond the voluntary data declared in the municipal register of inhabitants, and that do not exceed 10%."

Faced with this situation, and to the extent that the Agency has to contact people in a vulnerable situation detected by the City Council, either through the information held by the social services, or through other factors (such as living alone, single-parent families or cases of housing overcrowding) that can be detected through the municipal register of inhabitants, access to the contact details contained in the RCA would be fully justified. However, as the DPD of the Catalan Health Service points out, this does not seem to justify the transmission of the data of all the people in the municipality, but only with respect to the vulnerable people to whom the Agency wants to address. This would require the Agency to specify these people.

On the other hand, in accordance with this same principle of minimization, and bearing in mind that the purpose would only be to contact these people, in view of the information provided, it does not seem necessary that the information communicated should 'include the no. CIP, given that identification can already be carried out through the first and last name and the number. DNI, NIE or passport. It should be taken into account in this regard that the CIP number, in accordance with recital 35 of the RGPD, is considered health data, to which the special protection provided for this type of data must therefore be applied .

Obviously, if the Agency needed to get in touch with all the insured - or with the citizens of the municipality, because it must be remembered that not all citizens appear in the RCA -, it could not be ruled out to access this data contained in the RCA, without prejudice, of course, that the City Council in this case would also have other means at its disposal (media, web dissemination, social networks...) that can allow the dissemination of the information that is necessary in an agile and generalized manner to take general protective measures or for interested citizens to contact the Agency or social services. But given that in the case analyzed in the consultation the purpose of the treatment is addressed only to people in a special risk situation, it would not be appropriate to extend the communication to all other insured people.

### III

Along with the communication we referred to in the previous point referring to the Agency, it seems that the City Council, specifically the Area of the City Council competent in matters of social services, could also use this data for the exercise of the powers assigned to it in the field of social services. In the consultation it is indicated that "the monitoring of the most vulnerable people in terms of health for social issues is done by the Area (...)", but does not specify what would be these specific actions to be carried out by the social services, if they must carry out any, given that the actions described in the previous point, linked to public health measures, seem to be carried out by the Agency. In fact, the presentation made at the consultation presents the action jointly, and even confusingly, with the ASPB, although it makes some clear reference to the action of the social services and the possibility that these they can co

of the twelfth Additional Provision of Law 12/2007, of 11 October, on social services. According to this Provision:

"Exchange of information between the Public System of Social Services and the Public Health System

The competent public administrations in the field of social services are enabled to access, without the prior consent of the persons concerned, the identification data and the personal identification code (CIP-AUT) assigned by the Catalan Health Service, by regarding those who are included in the Central Register of insured persons of the department competent in health matters, with the purpose of exchanging information between the public social services system and the public health system in cases where the regulations current law allows it, when it is necessary to attend to people in a comprehensive way, addressing their care, social, work and health needs in a coordinated manner."

As can be seen, this additional Provision referred to by the City Council does not in itself constitute an authorization to communicate data to the social services, since it is limited to establishing that it is possible to communicate to the social services data contained in the RCA, "in cases where current regulations allow it". It will therefore be necessary to see if there is any legal authorization to carry out the communication.

In this sense, Law 15/1990, of 9 July, on health management in Catalonia, creates the Catalan Health Service to carry out an adequate organization and management of the health system in Catalonia. Article 41 of this law refers to the basic areas of health and primary care centers (CAP), and expressly provides that "To develop better comprehensive care, it must be promoted that Care Teams Primary coordinate with the social resources of the existing local administrations." (art. 41.3 Law 15/1990).

That is to say, Law 15/1990 foresees a coordination between certain health care services and the social services of local bodies, for the purposes and with the purpose of improving comprehensive care for the patient.

For its part, article 39 of the LSS provides that:

"1. The Government and the department responsible for social services must ensure the proper coordination and integration of the social services system with other systems that contribute to people's well-being.

2. The coordination measures must be directed especially to the areas of health, education, employment, justice, housing and culture and must guarantee the exchange of the necessary information to detect situations of high social risk and intervene in them ."

If we adhere to the legal authorization that follows from article 41.3 of Law 15/1990, regarding the coordination required between the primary care teams and the social services of the local administrations to provide comprehensive attention to the people served, in connection with the provisions of article 39.2 of the LSS, it would not be contrary to the data protection regulations that the social services can access information of the people listed in the RCA in order to serve people who are in a situation of high social risk. But as in the case of the authorization for the Agency, the principle of minimization would also apply here, so the communication of data

identifying and contact information should be limited to people who are in this situation of high social risk referred to in article 39.2 LSS. To this end, the City Council should specify, when consulting the Catalan Health Service, the specific people who are in this situation and in respect of whom it needs contact details. As in the previous case, the communication of the data relating to the number would not seem justified in this case either. CIP.

#### IV

Finally, reference should be made to a couple of additional issues raised as a result of the request.

On the one hand, it is positively valued that the request specifies that the transmission of the information must be done by means of encrypted files and that the deprotection code is transmitted by a different route to the person indicated.

On the other hand, and with respect to the processing period of the data communicated, it is indicated that they will be of exclusive use for the management of public health during the COVID-19 pandemic during and up to 3 months after the end of the state of alarm situation decreed by the State Government. In this regard, it should be noted that the authorization for the communication of data to which we have referred would be given not by the validity of the state of alarm decreed by the State Government but by the existence of a situation that requires it from a public health point of view.

In accordance with the considerations made in these legal foundations in relation to the query raised in relation to the possibility of a breach of personal data protection legislation, the following are made,

#### Conclusions

The regulations for the protection of personal data allow to communicate to the Agency competent in matters of public health, within the framework of actions of the PROCICAT Plan, the data contained in the RCA relating to the name and surname, date of birth, gender, address, Assigned EAP, DNI/NIE/passport, landline, mobile phone and email, to be able to use them for public health purposes to deal with the COVID-19 health crisis.

Likewise, the Catalan Health Service could also communicate this data to the City Council's social services in order to attend to people who are in a situation of high social risk linked to this health crisis.

Barcelona, April 6, 2020