

CNS 15/2020

**Opinion in relation to the query made by the Data Protection Officer of a City Council in relation to the possibility of using the data of the owners of the properties recorded in the Real Estate Tax, to inform them of an illegal occupation, as well as for the cleaning of the security forest strips**

**A request for an opinion from the Data Protection Delegate of a City Council is presented to the Catalan Data Protection Authority in relation to the possibility of using the data of the owners of the properties recorded in the Property Tax Real estate, to inform them of an illegal occupation, as well as for the cleaning of the security forest strips.**

**Having analyzed the query, which is not accompanied by other documentation, in accordance with the report of the Legal Counsel I issue the following opinion:**

**I**

**(...)**

**II**

**In the consultation of the City Council, "the possibility of using data from the Tax of Real Estate (specifically the data of the property owners) to inform them when the police had evidence of an illegal occupation (since we understood that there was a change of purpose), as well as for the cleaning of the security forest strips ".**

**Given that the purpose for which you want to access the data is to contact the owners of the properties to inform them either of a possible illegal occupation, or to carry out the works of cleaning of the forest strips and that, for this purpose, it is required to know the people who own the properties as well as the address in order to be able to contact them, it must be understood that the access that is intended would be limited to identifying data of the owners (name, surname, address and location of the property).**

**In order to focus the query raised, it should be taken into account that, in accordance with Regulation (EU) 2016/679, of the Parliament and of the European Council, of 27 April 2016, General Data Protection (hereinafter , RGPD) any treatment of personal 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 collection, registration, organization, structuring, conservation, adaptation or modification, extraction, query, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction." (article 4.2 RGPD), has submitted to the principles and guarantees established by that Regulation.**

The RGPD defines personal data as: “all information about an identified or identifiable natural person (the “data subject”); 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 GDPR).

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 a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD that legitimizes this treatment, either the consent of the person affected, or any of the other circumstances which provides for the same precept. In the field of public administrations, the legal bases provided for in letters c) and e) of article 6.1 of the RGPD are of particular interest, according to which the treatment will be lawful when it is necessary for the fulfillment of 'a legal obligation applicable to the controller (letter c), or when the treatment is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the controller (letter e).

However, as can be seen from Article 6.3 of the RGPD, the legal basis for the treatment indicated in both cases must be established by European Union Law or by the law of the Member States that applies to the person responsible for treatment.

The referral to the legitimate basis established in accordance with the internal law of the member states requires, in the case of the Spanish State, in accordance with article 53 of the Spanish Constitution, that the rule of development, to be about a fundamental right, has the status of law.

In this sense, article 8 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights establishes the legal scope of the enabling rule.

In the case at hand, it will be necessary to analyze, first of all, whether there is a legal basis for the treatment referred to in the query for the purpose of illegal occupation of real estate and for the cleaning of forest strips of security, as a result of the exercise of public powers conferred on the data controller (Article 6.1.e) RGPD).

### III

With regard to the purpose related to the illegal occupation of a property, Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) provides, in articles 25 and following, what are the municipal powers. Specifically, it provides that the municipality will, in any case, exercise powers under the terms of the legislation of the State and the Autonomous Communities in certain matters, among which there is no express reference to actions in matters of employment illegal, but if in matters of urban planning and housing (25.2.a) as well as local police and civil protection (25.2.f), which could involve the action of the municipality in cases of illegal occupation of buildings.

In terms of housing, Law 18/2007, of 28 December, on the right to housing gives municipalities powers of control, inspection, enforcement, penalty, etc. Specifically, article 8 establishes:

**"Article**

**8 Local competences**

**1. Local bodies, under the principle of autonomy for the management of their interests, exercise housing competences in accordance with what is established by local regime legislation, urban planning legislation and this law , without prejudice to the ability to sign agreements and coordinate actions with other administrations and agents of social and private initiative that act on the protected and free housing market.**

**2. In addition to the powers of promotion and management that are recognized by local regime legislation and the powers of control, inspection, enforcement, sanction and others that are recognized by this Law, local bodies can agree their own housing policies with the Administration of the Generalitat, within the framework of the local and supralocal planning instruments established by this Law and the urban planning legislation, and may request the creation of consortia or local housing offices for the joint management of functions and services linked to the housing (...)**

**4. Local bodies whose size makes it difficult for them to efficiently exercise the powers that this law attributes to them on the control of the quality of the real estate park, on equality in access and occupation of housing and on the activities of control and sanction may instruct another local body or the department competent in housing matters to carry out the management linked to these powers, in accordance with what is established in article 15 of State Law 30/1992 , of November 26, of the legal regime of public administrations and the common administrative procedure."**

Likewise, Law 16/1991, of July 10, on Local Police, attributes to the local police, among others, the following functions:

**"(...) d) Act as administrative police, in order to ensure compliance with regulations, ordinances, bans, resolutions and other municipal provisions and acts, in accordance with current regulations. e) Act as judicial police, in accordance with article 12 and current regulations. f) Carry out preventive measures and actions aimed at preventing the commission of criminal acts, in which case they must communicate the actions carried out to the competent security forces or bodies. (...) h) Cooperate in the resolution of private conflicts, when required to do so. (...)"**

In the exercise of these functions, local police officers may become aware of the existence of illegitimate occupations that justify municipal action.

Therefore, it can be concluded that, in accordance with the aforementioned legal norms, the treatment for the purpose related to the illegal occupation of a property can be considered necessary

for the exercise of public powers conferred on the data controller (Article 6.1.e) RGPD) and, therefore, this will constitute the legitimate basis of the treatment.

With regard to the purpose relating to the cleaning of forest security strips, article 25.1 of the LRBRL attributes to the municipalities, in addition to the aforementioned powers in matters of civil protection and fire prevention and extinguishing (article 25.2 .c), the conservation of roads and rural roads (article 25.2.d) or the protection of the environment (article 25.2.f).

For its part, Law 5/2003, of April 22, on measures to prevent forest fires in urban areas without immediate continuity with the urban plot establishes a series of measures to prevent forest fires that must comply with those urbanizations that do not have immediate continuity with the urban plot and that are located less than five hundred meters from forest land (articles 1 and 3).

In this sense, the Law provides that, in the event that the obliged subjects have not carried out the cleaning work established in article 3.1 sections a), b) and e), such obligation corresponds to the City Council, which may resort to the 'forced execution of these actions. Likewise, the City Council is also responsible for cleaning the roads and internal roads and access to the development, in accordance with the local regime legislation (article 4.4).

So, for this purpose, the legal basis would also be the exercise of public powers granted to the data controller (Article 6.1.e) RGPD)

#### IV

The RGPD establishes that all data processing, in addition to being lawful, must comply with the rest of the principles and guarantees it establishes, among which it is necessary to take into consideration, for the purposes that concern us, the principle of limitation of the purpose of the treatment (Article 5.1.b) RGPD), according to which the data must be collected for specific, explicit and legitimate purposes, and will not be subsequently processed in a manner incompatible with said purposes; in accordance with article 89, paragraph 1, the subsequent processing of personal data for archiving purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes”.

The use of the personal data that the City Council has for the management of the IBI, for a different ulterior purpose such as communication with the owner of an illegally occupied property or of properties in which has to proceed with the cleaning of the security forest strips, it would be data processing that, in principle, could come into conflict with the principle of purpose limitation.

In this sense, article 6.4 of the RGPD provides that the treatment for a purpose other than that for which the data were collected may be based, among others, on the law of the Union or of the Member States that constitutes a measure to safeguard the objectives indicated in article 23.1.

In the case at hand, the purposes for which the data is to be used would be aligned with the objectives of public security and the protection of the rights of other persons referred to

article 23.1 RGD, so it is necessary to see if there is any rule with the rank of law that allows the change of purpose.

In the case at hand, the data referred to in the query are those relating to the management of the IBI. The City Council manages the IBI based on the information contained in the real estate cadastre, as well as the other documents on the variations prepared for the purpose by the General Directorate of the Cadastre, as established in article 77.5 of the LRLH.

In accordance with article 1 of the Land Registry Law, the real estate registry is an administrative register dependent on the Ministry of Finance in which rural, urban and special properties are described.

Regarding the cadastral description of real estate, article 3 of the Cadastre Law provides that:

"The cadastral description of real estate will include its physical, economic and legal characteristics, among which will be the location and cadastral reference, the surface, the use or destination, the type of cultivation or use, the quality of the constructions, the graphic representation, the market reference value, the cadastral value and the cadastral owner, with his fiscal identification number or, in his case, foreigner's identity number. When the properties are coordinated with the Property Registry, this circumstance will be incorporated together with its registration code"

However, it should be borne in mind that the Cadastre Law establishes a specific regime of access to cadastral data that could enable the processing of the data subject to the query.

Chapter VI of the Cadastre Law regulates access to cadastral information and attributes the protected character to certain data, thus article 51 establishes:

"For the purposes of the provisions of this title, the number, surname, company name, identification code and domicile of those registered in the Real Estate Registry as owners, as well as the cadastral value and the cadastral values of land and, as the case may be, the construction of individual real estate

Regarding access to protected cadastral information, article 53 of the Cadastre Law establishes:

"1. Access to protected cadastral data can only be carried out with the express, specific and written consent of the affected person, or when a law excludes said consent or the information is collected in any of the following cases of legitimate and direct interest: a) For the execution of historical, scientific or cultural research projects sponsored by universities or research centers, as long as they are qualified as relevant by the Ministry of Finance. b) For the identification and description of the properties, as well as for the knowledge of the cadastral alterations related to the documents that authorize or the rights that inscribe or for those whose granting or registration is requested, by the notaries and registrars of the property, in accordance with the provisions of this Law and the

mortgage legislation. The notaries will also be able to access the cadastral agreements derived from said alterations for their delivery, as the case may be, to the interested parties. c) For the identification of the adjoining plots, with the exception of the cadastral value of each of the properties, by those listed in the Real Estate Registry as owners. d) By the holders or co-holders of rights of real transcendence or of lease or partnership that fall on the immovable goods registered in the Real Estate Registry, with respect to said immovables. e) By the heirs and successors, with respect to the real estate of the causer or transferor that is registered in the Real Estate Registry.

2. However, the protected cadastral information may be accessed, without the consent of the affected party: a) The bodies of the General Administration of the State and other territorial public administrations, the State Agency of Tax Administration and management entities and services social security commons, with the limitations derived from the principles of competence, suitability and proportionality. b) The parliamentary commissions of investigation, the Ombudsman and the Court of Accounts, as well as the autonomous institutions with similar functions. c) Judges and courts and the Public Prosecutor's Office. d) Organisms, corporations and public entities, for the exercise of their public functions, through the Administration on which they depend and as long as the conditions required in paragraph a) are met.”

Therefore, access to the protected data of the Register is configured as restricted access, and is only allowed if the consent of the holders is obtained or if, as could be the case in this case, it is a public administration territorial that requests it based on the assumption provided for in article 53.2.a), cited.

That is to say, access by the City Council to protected data from the Cadastre will always have to be related to the exercise of its own powers, mainly in relation to the IBI, but also municipal powers that may require, for its compliance, the processing of data from the Cadastre.

In the case at hand, the Land Registry Law would enable the change of purpose with regard to the treatment of property owners' data by the city council, whenever necessary for the exercise of its powers, and the principles of competence, suitability and proportionality referred to in the Land Registry Law are respected.

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With regard to the principle of competence, it has already been explained in the legal basis III of this opinion, that the LRBRL and other sectoral regulations attribute to the municipalities competences in the matters referred to in the consultation.

Regarding the communication to the owners of the properties in cases of illegal occupation, to the extent that the city council intervenes in the exercise of the powers attributed by the LRBRL in matters of housing, or the police, or those attributed by Law 18/2007, of December 28, on law

in housing or other sectoral regulations, access to the Real Estate Registry data would respect the principle of competition required by article 53.2.a) of the Registry Law.

In the same sense, and with regard to the cleaning of forest safety strips, article 25.1 of the LBRL attributes to the municipalities, competences in matters of civil protection and prevention and extinguishing of fires, conservation of paths and roads rural areas and the protection of the environment and Law 5/2003, of April 22, on forest fire prevention measures in urbanizations without immediate continuity with the urban plot, establishes a series of forest fire prevention measures.

So, in this case, the principle of competence required by article 53.2.a) of the Land Registry Law is also complied with, insofar as the city council has powers attributed to the prevention of forest fires, which would include, in any case, the cleaning work required by Law 5/2003.

But in addition, it is necessary for the data to be suitable and proportionate for the purpose pursued.

With respect to the suitability of the real estate cadastre data for the purposes of the inquiry, it must be taken into account, as stated in the statement of reasons of the Cadastre Law, that this is: "an administrative record placed in the service of the aforementioned constitutional principles and, therefore, of the set of public administrations, federal officials and citizens, all without prejudice to the competence and functions attributed to the Land Registry, the only one that has effects of public faith with respect to ownership and real rights on immovable property". That is to say, in those cases in which it is required to have public faith regarding the ownership of immovable property - because the consequences of the municipal action must entail a burden for the owner or in the case of procedures in which it is necessary an undoubted certainty about who the owner is - the ideal data for that purpose would be those contained in the Property Registry.

In this regard, the Mortgage Law, in its article 1, establishes that the Property Registry: "has the purpose of registering or noting acts and contracts relating to the domain and other real rights on immovable property".

Specifically, article 9 of the Mortgage Law provides that:

"Every registration that is made in the Register will express the following circumstances:  
1<sup>a</sup> The nature, situation and boundaries of the properties subject to the registration, or to which the right that must be registered affects, and their surface measurement, number and number, if they are included of the title. (...) 4<sup>a</sup> The natural or legal person in whose favor the registration is made."

The Property Registry is public in the terms established by article 221 of the Mortgage Law, which establishes:

"The Registers will be public for those who have a known interest in finding out the status of real estate or real rights registered.

**The interest will be presumed in every authority, employee or public official who acts by virtue of his office or position.”**

**The City Council, in the exercise of its powers, could demonstrate an interest in knowing the information about the owners or persons listed as owners of the properties.**

**However, in the case at hand, both for the communication to the owners of the real estate in the case of illegal occupation, and to contact the owners in relation to the cleaning of the strips forest security, for the identification of the holder it would be sufficient with the certainty derived from the cadastral registration, which data could be suitable.**

**Likewise, in accordance with the principle of proportionality, in both cases this access should include only the personal data strictly necessary to make the appropriate communications to the owners of the properties, that is, the identification data name and surname of the owners of the properties and the contact details.**

## **Conclusions**

**Access to the identification and contact data of the owners of the properties that the city council has as a result of the management of the IBI in order to notify them of possible illegal occupation or for the cleaning of the forest strips can take refuge in article 6.1.e) and 6.4 RGPD in relation to the rules that attribute powers to town councils in the aforementioned matters and the Land Registry Law.**

**Barcelona, May 15, 2020**