

Opinion in relation to the query made by a city council on the publication of data on temporary temporary incapacity of public employees on the municipal Intranet

A letter from a city council is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the possibility of publishing data on the temporary temporary incapacity of public employees on the municipal Intranet in view of the established in Law 19/2014, of December 29, on transparency, access to public information and good governance.

Specifically, it is proposed to publish the initials of workers who are in a situation of temporary temporary disability, the duration of this and the department to which they belong.

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

Regulation (EU) 2016/679, of the Parliament and of the Council, of April 27, 2016, General Data Protection (hereafter RGPD) considers "treatment": 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, dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2).

In turn, it defines data relating to health as "personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about their state of health" (Article 4.15) .

Regarding the concept of health data, Recital 35 of the RGPD specifies that:

"Among the personal data relating to health must be included all the data relating to the state of health of the interested party that give information about their past, present or future state of physical or mental health. It includes the information on the natural person collected on the occasion of his registration for healthcare purposes, or on the occasion of the provision of such assistance, in accordance with Directive 2011/24/EU of the European Parliament and of the Council¹¹; any number, symbol or data assigned to a natural person that uniquely identifies him for health purposes; the information obtained from tests or examinations of a part of the body or a body substance, including that from genetic data and biological samples, and any information related, for example, to an illness, a disability, the risk of suffering from diseases , the medical history, the clinical treatment or the physiological or biomedical state of the interested party, regardless of its source, for example a doctor or other healthcare professional, a hospital, a medical device, or an in vitro diagnostic test."

The consultation proposes the publication or dissemination through the municipal Intranet of information relating to public employees (their initials would be indicated) who are in a situation of temporary temporary incapacity, with an indication of their duration and the department what they belong to

Despite the fact that the information that is intended to be disseminated does not include the specific reason that has caused the situation of temporary incapacity or absence from work of the affected workers, it must be borne in mind that the fact of indicating that they are in this situation in itself reveals or puts it is clear that the absence from his workplace would, in any case, be due to health reasons, so it must be considered that, in accordance with the RGPD, we are dealing with information relating to the state of health of these workers.

Likewise, it should be noted that the fact of using only the initials of the workers does not imply that we are dealing with anonymized data and that, therefore, the intended publication remains excluded from the scope of protection conferred by the protection legislation of personal data (consideration 26 RGPD).

Although the use of incomplete or missing personal data, such as the real initials of the affected persons, may to a certain extent make it difficult to identify the affected person, it should be borne in mind that this identification remains possible without requiring disproportionate efforts , especially in the case examined in which the initial statements would be linked to the information relating to the department to which each worker belongs and that, given the size of the municipality, it would not seem that the City Council would have to have a very large workforce.

Article 5.1.a) of the RGPD establishes that all processing of personal data, such as the publication or dissemination of data, must be lawful, fair and transparent.

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based, in the following terms:

"1. The treatment will only be lawful if at least one of the following conditions is met: a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes; (...) c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment. (...)"

Article 6.3 of the RGPD establishes that the basis of the treatment indicated in article 6.1.c) of the RGPD must be established by the Law of the European Union or by the law of the Member States that applies to the responsible of the treatment.

The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 CE), as recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

At the same time, article 9.1 of the RGPD prohibits "the treatment of personal data that reveal ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation, and the treatment of genetic data, targeted biometric data to uniquely identify a natural person, data relating to health or data relating to the sexual life or sexual orientation of a natural person."

In turn, article 9.2 of the RGPD establishes different assumptions that, if met, would lift this prohibition to treat special categories of data.

Therefore, when the treatment affects special categories of data, as would be the case at hand, in which data relating to the health of certain public employees would be disseminated (article 4.15) RGPD), it must be borne in mind that it would also be necessary, to consider the legitimate treatment, the concurrence of any of the enabling circumstances provided for in article 9.2 of the RGPD, such as the express consent of the affected persons (letter a) or another of the exceptions provided for in this same article.

III

In the consultation, Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) is pointed out as the enabling rule for the intended dissemination of personal data.

The purpose of the LTC is to "establish a system of relations between people and the public administration and other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and administrative management and the guarantee of retention of accounts and responsibility in public management" (article 1.2).

For these purposes, it establishes, within Title II aimed at the transparency of public activity, the obligation of the subjects included in article 3 (among others, the entities that make up the local administration in Catalonia (section 1. b)) to adopt the necessary measures to facilitate people's knowledge of public information, which must be disseminated through electronic headquarters and the corresponding websites in a clear, structured way and in a reusable format (article 5.1 LTC).

The same Law 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 subjects obliged in accordance with the provisions of this law" (article 2.b) LTC).

The information subject to the transparency regime is regulated in article 8.1 of the LTC in the following terms:

"1. The public administration, in application of the principle of transparency, must make public the information relating to: a) The institutional organization and the administrative structure. b) Economic, accounting, budgetary and patrimonial management. c) Decisions and actions with a special legal relevance. d) The workforce, the list of jobs and the remuneration system. e) The administrative procedures related to the exercise of their powers. f) Contracts and agreements. g) Calls for proposals and the granting of subsidies and public aid. h) Reports and studies. i) Plans, programs and general reports. j) Statistical information. k) Geographical information. l) The matters and actions whose publicity is established by rule. m) Any matter of public interest, and the information that is most frequently requested through the exercise of the right of access to public information."

According to article 8.2 of the LTC, this information "must include all data and documents with the scope and precision determined by articles 9 to 15" and "must be congruent with the purpose of knowledge provided for in each case and must be adequate and complete with regard to the informational content determined by the Law."

Also, when the public information includes personal data, the publication must take into account the limits established, with regard to the protection of personal data, in articles 23 and 24 of the LTC.

This is clear from article 7.1 of the LTC, according to which "the limits applicable to transparency obligations are the same as those established by title III for the right of access to public information, especially those relating to the protection of personal data".

After examining articles 9 to 15 of the LTC, particularly article 9 relating to transparency in the institutional organization and administrative structure, it should be noted that none of them establish the obligation to disseminate, for the purposes of transparency, information on public workers regarding the fact of being in a situation of temporary temporary incapacity for a certain period of time.

In fact, with attention to the limit of article 23 of the LTC, which the City Council should have in mind in attention to the nature of the information that would be the subject of dissemination (data relating to health), an eventual publication of this type of information (it must be remembered that the transparency obligations established by this law are minimal and general (article 6.2 LTC)) would require the express consent of the persons affected.

The aforementioned article 23 of the LTC provides that:

"Specially protected personal data

Requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents through of a letter that must accompany the application."

Given this, it can be said that the LTC could not act as an enabling rule for the dissemination of information regarding those public employees who are in a situation of temporary temporary disability, with an indication of its duration and the department in what they belong to, as indicated in the query.

IV

At this point, it should be noted that, from the information available, it does not seem that we are in the present case before a publication that responds to the transparency of public activity in terms of the LTC.

As the preamble of the LTC emphasizes, the objective pursued with active advertising, that is, with the direct publication of certain information by the Administration without the need for citizens to request it, is allow the participation of citizens in public affairs, evaluating public actions and guaranteeing a responsible exercise of public law.

Hence the need for the information to be easily accessible to people through its publication on the electronic offices and websites of the obliged subjects, as well as on the Transparency Portal (article 5 LTC).

The City Council in its consultation does not refer to the publication of information on the electronic headquarters or website, as required by article 5 of the LTC, but on the municipal Intranet, a platform where, as it states, it is disseminated all relevant information related to the internal organization of the City Council and to which only municipal employees have access. Therefore, it seems that we would be faced with a type of publication or dissemination of information that would differ from the purposes intended by the LTC.

The reference to the LTC in the consultation can be understood as a manifestation of the City Council's will to be transparent with regard to its internal organization, with the aim of making it easier for its workers to know the absences of the rest of the staff and therefore which services are guaranteed at any given time. That is to say, that we could be faced with data processing that could respond only to internal organization purposes.

If so, it must be borne in mind that, from the data protection aspect (article 5.1.b) RGPD), the knowledge of the information that is intended to be disseminated should be limited to the staff of the City Council who require it for the exercise of the functions entrusted to them, as could be the case, for example, of the staff of human resources.

In other words, the fact that the City Council can lawfully process personal data of its employees, such as those relating to temporary temporary incapacity (Royal Legislative Decree 8/2015, of October 30, approving the revised text of the General Social Security Law and Royal Decree 625/2014, of July 18, which regulates certain aspects of the management and control of processes for temporary incapacity in the first three hundred and sixty-five days of its duration) does not mean that all the people in the organization can access this information, but that only those people who need it because of their functions will have to access it.

Beyond this, in a context of internal organization and in order to guarantee the correct provision of services, it cannot be ruled out that it may be considered justified to reveal to other specific workers the absence of their workplace some fellow This could be the case, for example, of the affected person's immediate superior and/or other workers in the same department or service that the affected person is a part of who may require it to perform their duties.

However, this information should not include the specific reason for said absence (indication of being in a situation of temporary temporary incapacity despite not specifying the specific reason), especially when, as is happening in the present case, these are special categories of data, nor does it seem that it should be extended to the entire organization (all departments), which would happen in the present case of being published on the municipal Intranet.

In view of the considerations made so far, it can be said that the intended publication in the present case, that is the dissemination through the municipal Intranet of information relating to public employees who are in a situation of temporary temporary incapacity, with an indication of its duration and the department to which it belongs, so that it is accessible to all City Council workers, would require the express consent of the people affected (article 9.2.a) RGPD).

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

Conclusions

The LTC does not prevent the publication on the municipal Intranet of information relating to public employees who are in a situation of temporary temporary incapacity, with an indication of their duration and the department to which they belong, so it would be necessary to have the express consent of the affected persons.

This without prejudice to being able to communicate the absence of these people to the workers who require it for the performance of their duties, without indicating the specific reason for this absence.

Barcelona, July 21, 2020

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