

CNS 40/2020

Opinion in relation to the query made by a City Council regarding a request to delete personal data

A query from the mayor of a City Council is presented to the Catalan Data Protection Authority in relation to a request from a resident of the municipality who requests that her personal data (name and surname and ID) be deleted of the Acta del Plenary where the members of the elections to the Parliament of Catalonia are chosen, which is accessible at the electronic headquarters of the City Council.

The consultation states that "at the time, based on the provisions of Law 5/1985, of June 19, on the General Electoral System and Law 7/1985 LBRL, these data were transcribed into the minutes of Plenary, to identify the person based on the models approved by the Central Electoral Board". It is also mentioned that "there may be problems, since this record has been sent to the transparency portal and there may be problems after 5 years to delete this data"

Taking into account these considerations, the opinion of this Authority is requested on whether the City Council should consider the request made.

Given that the answer to the query may vary depending on the specific object of the request made by the applicant, the town hall is asked to provide a copy of it.

Having analyzed the consultation and the request to exercise the rights that underpins it, in accordance with the report of the Legal Counsel I issue the following opinion:

Legal Foundations

I

(...)

II

Article 17 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (hereinafter, the RGPD), with the title "Derecho de supresión ("the right to be forgotten")", regulates the right that the holders of personal data have to request the deletion of the data of its ownership on which the person in charge is processing, in the following terms:

"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:

a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;

c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;

e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;

f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.

2. When he has made personal data public and is obliged, by virtue of the provisions of section 1, to delete said data, the controller, taking into account the technology available and the cost of its application, will adopt reasonable measures, including technical measures, with a view to informing those responsible who are dealing with personal data of the interested party's request to delete any link to those personal data, or any copy or replica thereof.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge; c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;

d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or

e) for the formulation, exercise or defense of claims"

In relation to the right to deletion, Recital 65 of the RGPD highlights the following:

"Those interested must have the right to have the personal data concerning them rectified and a "right to be forgotten" if the retention of such data violates the present Regulation or the Law of the Union or of the Member States applicable to the person in charge of

treatment In particular, the interested parties must have the right to have their personal data deleted and stopped being processed if they are no longer necessary for the purposes for which they were collected or treated in another way, if the interested parties have withdrawn their consent for the treatment or object to the processing of personal data that concerns them, or if the processing of their personal data otherwise violates the present Regulation. This right is relevant in particular if the interested party gives consent as a child and is not fully aware of the risks involved in the treatment, and later wants to delete such personal data, especially on the Internet. The interested party must be able to exercise this right even if he is no longer a child. However, the subsequent retention of personal data must be lawful when necessary for the exercise of freedom of expression and information, for the fulfillment of a legal obligation, 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 the treatment, for reasons of public interest in the field of public health, for filing purposes in public interest, scientific or historical research purposes or statistical purposes, or for the formulation, exercise or defense of claims."

As a starting point, it should be borne in mind that article 17 of the RGPD regulates the right of deletion as the right of the interested party to demand from the person responsible for the treatment that they exclude their personal data from the treatment when any of the circumstances provided for in this article (the data are no longer necessary for the purpose for which they were collected, the interested party withdraws the consent on which the treatment is based or opposes it and there is no other legitimate basis for the treatment, the treatment violates the principles of th

The right to deletion (or the right to be forgotten) is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. This is why the limitations to this right of deletion must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. Thus, the cases in which the RGPD excludes the right to deletion and oblivion, which are included in the third paragraph of article 17, are limited to those cases in which the treatment is necessary to exercise the right to freedom of expression and information, for the fulfillment of a legal obligation or a mission in the public interest or the exercise of public powers, for reasons of public interest in the field of public health, purposes of archiving, scientific, historical or statistical research and matters related to the formulation, exercise or defense of claims. Without prejudice to the limits provided for in article 23 of the RGPD.

It should be mentioned at this point, that letter e) of article 17.1 of RGPD establishes as one of the circumstances that give the interested party the right to obtain from the controller the deletion of his personal data, that this object to the treatment in accordance with Article 21.1 of the RGPD and other legitimate reasons for the treatment do not prevail.

In this sense, the RGPD regulates in its article 21 the right of opposition. For the purposes that concern us now, article 21 establishes:

"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of), including the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the personal data, unless he proves compelling legitimate reasons for him

treatment that prevails over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims. (...)

6. When personal data are processed for scientific or historical research purposes or statistical purposes in accordance with article 89, paragraph 1, the interested party shall have the right, for reasons related to their particular situation, to oppose the processing of personal data that concern, unless it is necessary for the fulfillment of a mission carried out for reasons of public interest.”

### III

In the case we are dealing with, it is necessary to refer first of all to the fact that, in view of the terms in which the applicant formulates his request before the City Council, his claim is aimed at the City Council not disseminating on the internet the personal data (name and surname together with your ID) that appear in the Minutes of the Plenary of the City Council, which had the purpose of recording the draw for the designation of the members of the electoral commissions in the elections to the Parliament of Catalonia for the year 2015, which, as indicated, is published at the electronic address: (...).

Indeed, it has been found that by carrying out an internet search based on the name of the applicant, the search engine offers through the address (...), access to the minutes of the plenary session of the City Council whose agenda is the "Draw to nominate the members of the electoral months for the regional elections of September 27, 2015", in which the names and surnames and the ID of the people who were designated to be part of the electoral months together with the positions that these people had to exercise in the electoral months.

This address (according to the information published on the internet) would correspond to the service provided to local bodies by the AOC Consortium that allows the automated publication of Plenary proceedings through its Transparency and Open Data Portal solution and its e-mail address.

Likewise, this search also gives as a result the electronic address (...), which allows access to the same record with the relationship with the first and last names, without including the ID, of all the people who were appointed and the positions that corresponded to each of these.

Consequently, and given the way in which the request is formulated, it seems that it is necessary to consider that the applicant is exercising the right of opposition before the City Council, given that his will is to oppose a certain treatment, the publication of your data, an option expressly included in article 21 of the RGPD. The exercise of the right of deletion would lead to the City Council removing these data from any support of the City Council in which they may appear, while in the opposition it is only intended to avoid a certain treatment, in this case the dissemination through "Internet.

### IV

Focusing the consultation on these terms, it is necessary to analyze whether the requirements that article 21 RGPD establishes regarding the right of opposition are met in this case and, consequently, whether it is co

justified to avoid the dissemination of the applicant's data regarding the treatment to which his request refers.

First of all, for the exercise of the right of opposition, the data of the person requesting must be the subject of a treatment based on the provisions of article 6.1 letters e) of) of the RGPD. In other words, the treatment must be 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 the treatment (6.1.e); or for the satisfaction of legitimate interests pursued by the data controller or by a third party (6.1.f)

Article 26 of Law 5/1985, of June 19, on the General Electoral System establishes that:

"1. The formation of the Tables is the responsibility of the Town Councils, under the supervision of the District Electoral Boards.

2. The President and the members of each Bureau are appointed by public lottery among all the people included in the list of electors of the corresponding Bureau, who can read and write and are under seventy years of age, if from the sixty-five years of age may express their resignation within seven days. The President must have a Bachelor's degree or Second Grade Professional Training, or alternatively, a School Graduate or equivalent.

3. The appointment of two substitutes for each of the members of the Board proceeds in the same way.

4. The draws mentioned above will take place between the twenty-fifth and twenty-ninth days after the announcement."

In accordance with this article, the town councils are entrusted with the formation of electoral districts. For this purpose, they must carry out a public lottery to designate the president and members of the electoral commissions, as well as their substitutes. The draw referred to in the electoral regulations is carried out in accordance with the local regime regulations and the recommendations of the Central Electoral Board in a session of the Municipal Plenum. It is therefore a requirement of the electoral regulations that the act of designation of the members of the electoral commissions is carried out in a public session.

From the sessions of the Municipal Plenary Sessions, the corresponding minutes are drawn up, which must include the information defined in article 109 of Royal Decree 2568/1986, of November 28, which approves the Organization, Operation Regulations and Legal Regime of Local Entities, among which it will be necessary to record, among other aspects, the agreements that are adopted. Once approved by the Plenary, the minutes are transcribed in the corresponding Book of Minutes of the municipality (article 110 of the same rule).

Regarding the publication of the proceedings of the Plenary meetings on the municipal website, article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector (LUMESPC) establishes:

"Local entities must publish the minutes of plenary sessions in their electronic headquarters. In their publication, the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy must be taken into account. For these purposes, yes

**they may include personal data without the consent of the person concerned, if it is data referring to acts debated in the plenary session of the corporation or provisions subject to publication in the corresponding official bulletin. In all other cases, without prejudice to the provisions of other laws, publication is only possible if the consent of the interested person is obtained or the data cannot, under any circumstances, be linked to the interested person himself.”**

**This rule establishes mandatory publication of the minutes of the Plenary Sessions. However, this authorization is conditional on compliance with the "regulations on data protection and the protection of the right to honor and privacy" and, limited to data referring to acts debated in the plenary session of the corporation or provisions subject to publication in the corresponding official bulletin. In the rest of the cases, (for example, questions, motions and interpellations that may have occurred in the plenary session but which are not linked to an act or provision adopted in the plenary session), it is only possible if you have the consent of the interested person or the data cannot, under any circumstance**

**In accordance with the aforementioned regulations, the processing of the data of voters who are designated members of the electoral months by the City Council is legitimate processing in relation to article 6.1.e) of the RGPD (the processing is necessary for the fulfillment of a mission carried out in the exercise of public powers conferred on the data controller)**

**However, it must be taken into account that any data processing, in addition to being lawful, must comply with the other principles and guarantees provided for in the RGPD, especially the principles of purpose limitation, data minimization, accuracy and limitation of the retention period, collected in article 5 of the RGPD.**

**Secondly, the exercise of the right of opposition is related to the existence of particular circumstances of the applicant. In the case before us, the applicant does not allege any circumstances related to his personal situation that support his request. In any case, article 21 of the RGPD attributes to the person in charge of the treatment the burden of proving the existence of "imperious legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims".**

**As you can see, by doing an internet search with the applicant's name, you can access the City Council's website where the controversial minutes are published, in which the people selected to integrate are identified the electoral months with their first and last name and, likewise, in the repository of acts of the city council of the electronic headquarters where the same act is also published but this includes the first and last name, together with the ID of the selected people.**

**The purpose of this treatment is none other than the transparency of carrying out the public act of the draw of the people who had to integrate the electoral months of the elections to the Parliament of Catalonia in 2015 and of the functions entrusted to the same in those electoral months.**

**It is given the circumstance that the passage of time itself would show that the personal data that allow the identification of the people chosen to be part of these months**

electoral are no longer necessary given that the purpose for which they were the object of treatment can now be considered achieved. After 5 years of the completion of the electoral process, and having already completed more than one entire legislature, in accordance with the principles of minimization (art. 5.1.c RGPD) and the principle of limitation of the conservation period (art. 5.1.e), it does not seem relevant or necessary to maintain the publication of the personal data of the people who were once part of a polling station.

On the other hand, with respect to the publication of administrative acts, it must be taken into consideration that the seventh additional provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) establishes the criteria to be followed when identifying interested persons. Thus, this provision establishes that in the publication of administrative acts the interested persons must be identified with the data of the name, surname and four random numerical figures of the DNI, foreigner's identity number, passport or equivalent document.

It should be remembered that, provisionally until the time when the governing bodies and competent public administrations approve provisions for the application of the aforementioned additional provision seven, the data protection authorities have jointly proposed a Guidance ([https://apdcat.gencat.cat/ca/documentacio/guies\\_basiques/Guies-apdcat/](https://apdcat.gencat.cat/ca/documentacio/guies_basiques/Guies-apdcat/)) for the provisional application of protection guarantees for the disclosure of the national identity document, foreigner's identity number, passport or equivalent document of the interested parties and, for this purpose, they have determined, randomly, the group of four figures that must be published for the identification of the interested parties in the publications

In any case, as this Authority has been recommending, in accordance with this additional provision, the name and surname may not be published together with the full number of the DNI, foreigner's identity number, passport or equivalent document .

Therefore, in the case at hand there are two circumstances to take into consideration: on the one hand, both publications (on the website and on the electronic site) could violate the principle of limitation of the retention period, according to which the data are not 'must be maintained in a way that allows the identification of the interested parties for longer than necessary for the purposes of the treatment; on the other hand, that the publication on the aforementioned electronic site would violate the principle of minimization according to which the data must be appropriate, relevant and limited to what is necessary in relation to the purposes for which they are treated since, in addition, publish the applicant's first and last name

In accordance with the above and unless the City Council, as responsible for the treatment, accredits the existence of "imperious legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation , the exercise or the defense of claims" the applicant's right of opposition should be recognized regarding the dissemination of his personal data through the aforementioned publications.

The City Council will have to exclude the personal data of the applicant with regard to its publication on the electronic headquarters or municipal website and, if it has been transmitted by a third party, as it could be in this case the Consorci AOC as the provider of the e-location service, must inform this third party of the result of the exercise of the right of opposition

personal data of the person requesting any copy of the document they have published on the Internet (art. 19 RGPD).

This is without prejudice to the fact that the City Council can treat them for their conservation and record in the municipal documentation.

### **Conclusions**

The City Council must consider the applicant's right to object to the processing of the personal data contained in the Minutes of the Plenary Session and, consequently, must take the necessary measures to exclude from the information published on the municipal website the applicant's data and, if it has been sent to a third party for publication on the Internet, must inform him of the result of the exercise of the right of opposition so that he also excludes the information from any copy of the document he has published on the internet.

Barcelona November 30, 2020

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