

Opinion in relation to the query made by a City Council on the publication of identifying data of qualified officials

A letter from a City Council is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the authorization to publish the identification data of officials authorized for the identification and authentication of persons, and the issuance of authentic copies.

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

I

(...)

II

The City Council states in its consultation that it is carrying out the procedures to create the Register of civil servants qualified for the identification and authentication of people, and the issuance of authentic copies, and that doubts are raised about the legitimacy to publish - their identifying data, so they request the opinion of this Authority.

The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (RGPD)) establishes that all processing 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 the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of authorization of access, comparison or interconnection, limitation, suppression or destruction" (article 4.2), it must be legal, loyal and transparent (article 5.1.a)).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based. Specifically, section c) provides that the treatment will be lawful if "it 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 this article 6.1.c) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for 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 EC), as recognized in Article 8.1 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD):

"1. The treatment of personal data can only be considered based on the fulfillment of a legal obligation required of the person responsible, in the terms

provided for in article 6.1.c) of Regulation (EU) 2016/679, when so provided by a rule of European Union law or a rule with the rank of law, which may determine the general conditions of the treatment and the types of data object of the same as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation. Said rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679."

III

In view of the context in which we find ourselves, it is necessary to take into account the provisions established in Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC).

Article 12 of the LPAC regulates assistance in the use of electronic media to those interested in the following terms:

- "1. The Public Administrations must guarantee that those interested can relate to the Administration through electronic means, for which they will make available the access channels that are necessary as well as the systems and applications that are determined in each case.
2. The Public Administrations will assist in the use of electronic means those interested not included in sections 2 and 3 of article 14 who so request, especially in relation to identification and electronic signature, submission of applications through the electronic register general and obtaining authentic copies. Likewise, if any of these interested parties does not have the necessary electronic means, their identification or electronic signature in the administrative procedure can be validly carried out by a public official through the use of the electronic signature system provided for it. In this case, it will be necessary for the interested party who lacks the necessary electronic means to identify himself to the official and give his express consent for this action, which must be recorded for cases of discrepancy or litigation.
3. The General Administration of the State, the Autonomous Communities and the Local Entities will keep up to date a register, or another equivalent system, where the officials authorized for the identification or signature regulated in this article will be listed. These registers or systems must be fully interoperable and be interconnected with those of the remaining Public Administrations, in order to check the validity of the aforementioned qualifications.

In this register or equivalent system, at least, the officials who provide services in the assistance offices in the matter of records will be listed."

In turn, article 13.b) of the LPAC recognizes the right of citizens "to be assisted in the use of electronic media in their relations with Public Administrations."

On the other hand, article 27 of the LPAC regulates the validity and effectiveness of the copies made by the Public Administrations in the following terms:

- "1. Each Public Administration will determine the bodies that have the authority to issue authentic copies of public administrative or private documents.

Authentic copies of private documents are only issued for administrative purposes. The authentic copies made by a Public Administration will be valid in the remaining Administrations.

For these purposes, the General Administration of the State, the Autonomous Communities and the Local Entities may make authentic copies by authorized official or by means of automated administrative action.

A register, or another equivalent system, must be kept up-to-date, where the officials authorized to issue authentic copies will be listed which must be fully interoperable and interconnected with those of the remaining Public Administrations, for the purposes of verifying the validity of the said qualification. This register or equivalent system will contain, at least, the officials who provide services in the registration assistance offices. (...)"

In accordance with these precepts of the LPAC, public administrations have the obligation to assist the interested persons (not included in the cases of article 14.2. and 14.3 LPAC) in the use of electronic media that usually licit, especially with regard to electronic identification and signature, the submission of applications through the general electronic register and the obtaining of authentic copies.

For these purposes, the LPAC establishes that the interested person must identify himself before the previously authorized official and give his express consent for the specific action, which must be kept to record it in cases of discrepancy or litigation

Likewise, the LPAC imposes on public administrations the obligation to create and keep up to date a register, or other equivalent system, of these officials (article 12.3 and 27.1).

As can be seen from the preamble of the LPAC, this register can include the officials dedicated to assisting those interested in the use of electronic media and the officials capable of making authentic copies, it being possible for the same official to be assigned all two functions or just one:

"It also highlights the obligation of Public Administrations to have a register or other equivalent system that allows records of the officials authorized to make authentic copies, so as to guarantee that they have been properly issued, and in the that, if this is how each Administration decides to organize it, the officials dedicated to assisting those interested in the use of electronic media may also be included together, there being no impediment to the same official having recognized both functions or only one of them."

In any case, this register must include the officials who provide services in the registration assistance offices.

In this case, the City Council intends to disseminate through its electronic headquarters the information contained in this register, which refers to the said qualified officials.

The purpose of this publication could be to provide interested persons who do not have identification and signature mechanisms to act electronically before the public administration with information about the officials designated by the same administration for the issuance of authentic copies and to identify and sign on their behalf in relation to those procedures likely to be carried out by qualified officials. In other words, allow the interested party to know that the person who attends to him can effectively present a document on his behalf to the administration or issue an authentic copy.

Point out, at this point, that the LPAC recognizes the right of interested parties to identify the authorities and staff at the service of the public administrations under whose responsibility the procedures are processed (article 53.1.b)).

Given this, it can be understood that we are dealing with information that can be considered of general interest and that can be disseminated by public administrations in the corresponding electronic sites.

On this issue, note that Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), enables public administrations to make public, in application of the principle of transparency, the information relating to "any matter of public interest" (article 8.1.m), notwithstanding that the limitations provided for by the same Law may be applicable.

Remember that according to article 7.1 of the LTC, "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 data."

In this regard, it should be noted that the LTC provides, in general, that the citizen can be provided with the "merely identifying" data of the people who have intervened in files due to their functions, as long as it is data that is related to the organization, operation or public activity of the Administration and are strictly necessary for the exercise of these functions (article 24.1)).

It is also necessary to keep in mind what is established in article 19 of the LOPDGDD, according to which:

1. Unless proven otherwise, the treatment of contact data and, where applicable, those relating to the function or position performed by the persons will be presumed to be covered by the provisions of article 6.1.f) of Regulation (EU) 2016/679 physical persons who provide services in a legal entity provided that the following requirements are met: a) That the treatment refers only to the data necessary for your professional location. b) That the purpose of the treatment is solely to maintain relations of any kind with the legal entity in which the affected party provides its services. 2. (...)

3. Those responsible or in charge of the treatment referred to in article 77.1 of this organic law may also treat the data mentioned in the two previous sections when it derives from a legal obligation or is necessary for the exercise of their powers."

Among the data controllers included in article 77.1 of the LOPDGDD, to which this article 19 of the LOPDGDD expressly refers, we find the entities that make up the Local Administration, among others.

This precept of the LOPDGDD enables the treatment by the City Council of the contact data and, if applicable, those relating to the function or position exercised by the physical persons who provide services, provided that the requirements established in this are met and

In view of these considerations, from the point of view of data protection it can be said that in a case such as the one raised, the City Council has sufficient authorization to disseminate the identification data of the qualified officials contained in the aforementioned register of

basis of article 6.1.c) of the RGPD, when responding to this treatment to the fulfillment of a legal obligation, in relation to the precepts of the LPAC and the LTC mentioned.

This, as long as the dissemination of this data complies with the principle of minimization (Article 5.1.c) RGPD), according to which "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed."

In this sense, and taking into account that the purpose of the intended dissemination would be for the citizen to be able to identify the person who has been authorized by the Administration for the identification and authentication of persons, and the issuance of authentic copies, and which can therefore assist him in the use of electronic media and act on his behalf, for the purposes of facilitating this "identification" it is understood that it would be sufficient, in this case, to publish the name and surname of the authorized official, information that it could be completed with the indication of the position and/or the seconding body and the procedures for which it is qua

Make it clear that the publication of other identifying information of qualified officials that could be contained in the register, such as their ID number or their identification number as an official, would be contrary to the principle of data minimization, by dealing with se of data not strictly necessary to be able to carry out this identification.

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

Conclusions

The publication of the first and last names of officials authorized to identify and authenticate people and the issuance of authentic copies in the scope of the City Council could find protection in article 6.1.c) of the RGPD in attention to the forecasts of the LPAC in terms of assistance in the use of electronic media to those interested, and to the forecasts of active advertising of the LTC.

Barcelona, December 17, 2020