

CNS 49/2020

Opinion in relation to the query made by a City Council regarding the publication on the City Council's website of data of the monitors contained in a supporting account of a grant awarded to the AMPA of a school in the municipality

A letter from the City Council's data protection delegate is submitted to the Catalan Data Protection Authority, requesting the Authority's opinion on the publication, on the City Council's website, of monitor data which appear in a supporting account of a grant awarded to the AMPA of a school in the municipality.

Specifically, the query refers to the personal data of the monitors contained in a supporting account of a grant awarded to the AMPA of a school in the municipality, and which is published on the institution's website City Council in compliance with the Catalan transparency law, according to the consultation.

Analyzed the query, which is accompanied by several e-mails related to the query formulated, given the currently applicable regulations and in accordance with the report of the Advisory Legally, the following is ruled:

I

(...)

II

According to the consultation, a person would have contacted the City Council as a result of the inclusion of their personal data (name and surname and salary), which would have been published on the City Council's website, in relation to a grant awarded to the APMA of a school in the mun

According to the information available, this person, AMPA monitor, believes that "I am not the beneficiary of any subsidy, but AMPA. I only provide a service to AMPA, and they manage the subsidy, so my name and those of my colleagues should not appear."

Based on the information available, the City Council would have informed this person that the reason for the publication of the referred data is the application of Law 38/2003, of November 17, general subsidies (hereafter, LGS) , and other applicable regulations, as well as the General Ordinance on Subsidies of the City Council, "as a creditor of the justification of a subsidy granted to the AMPA of the School", in reference to the affected person .

When the query is placed in these terms, it is necessary to refer to Regulation (EU) 2016/679, of April 27, general data protection (RGPD), according to which personal data is "all information about a natural person identified or identifiable ("the interested party"); an identifiable natural person shall be considered 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 own elements

of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person; (art. 4.1 RGPD).

The processing of personal data is subject to the principles and guarantees of the regulations for the protection of personal data, that is, the RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

Article 5.1.a) of the RGPD establishes that all processing of personal data (Article 4.2)) must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency).

In this sense, article 6 of the RGPD establishes that there must be a legal basis that legitimizes the treatment, either the consent of the affected person (section 1.a)), or any of the other legitimizing bases that they foresee, as now, that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (section 1.c), or if "the treatment is 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" (section 1.e).

III

The query is not accompanied by specific information about the subsidy to which the query refers, specifically, the basis of the call. In any case, the consultation would be related, according to the information available, to the granting of a subsidy to the AMPA of a school in the municipality.

Article 5 of Organic Law 8/1985, of 3 July, regulating the right to education, guarantees the freedom of association of parents of students in the educational field (section 1). According to the regulatory regulations, AMPAs are configured as associations with their own legal personality, and must be registered in the register of legal entities of the Generalitat de Catalunya (arts. 1, 5 and 6 of Decree 202/1987, of 19 May, by which the associations of parents of students are regulated).

At the outset, from the perspective of personal data protection regulations, there would be no inconvenience in publishing the name or company name and/or NIF of the legal entities that may eventually be beneficiaries of a subsidy, as could be the case of an AMPA, since the RGPD extends its scope of application only to the processing of data of natural persons (art. 4.1 GDPR).

Having said that, it is necessary to examine whether the personal data of natural persons related to the AMPA who would have requested a subsidy from the City Council, in particular, the data of the monitors who provide services to the AMPA, must be the subject of publication by the City Council during the grant procedure for the said grant, as indicated in the query.

Article 8.1.g) of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, LTC), in relation to information subject to the transparency regime, provides that The public administration, in application of the principle of transparency, must make public the information relating to: "The calls for proposals and the awarding of subsidies and public aid."

Article 15.1 of the LTC provides that:

"1. The information relating to subsidies and public aid that the obliged subjects must make public in application of the principle of transparency must include: (...) c) The subsidies and public aid granted, with the indication of the amount, the object and the beneficiaries. This information must include grants and aid, must be up-to-date and must refer to the last five years. It must also include subsidies and grants awarded without advertising and competition if these requirements have been exempted, in the cases established by law. In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved. d) Information relating to the financial control of subsidies and public aid granted. e) The justification or withholding of accounts by the beneficiaries of the grant or aid awarded."

In accordance with these forecasts, the entities granting subsidies, in this case, the City Council, are obliged to publish on their electronic headquarters or website, on the one hand, information relating to the beneficiaries of public subsidies and aid (ex. art. 15.1.c) LTC), as well as, on the other hand, information relating to the justification or withholding of accounts for the subsidy granted (art. 15.1.e) LTC).

In cases where the transparency legislation foresees the obligation to publish certain information on the transparency portal or on the corporate website, in this case, of the City Council, such as in relation to subsidies, the data protection regulations do not prevent the publication of personal information necessary to comply with the regulations, specifically, information relating to the "beneficiaries", or that information necessary for the purposes of justifying the subsidy received.

Likewise, it is necessary to take into account the provisions of the specific regulations on subsidies, that is, Legislative Decree 3/2002, of 24 December, which approves the revised text of the Public Finances Act of Catalonia (TRLFPC). According to article 94.6 of the TRLFPC, "granting bodies must publicize the grants awarded in accordance with the applicable regulations on transparency." In accordance with article 96.bis, section 4, of the TRLFPC, "the obligation established in article 15.c of Law 19/2014, of December 29, on transparency, access to public information and good government, it becomes effective with the transmission of the information to the Registry of Subsidies and Aids of Catalonia."

On the other hand, articles 18 and 20 of the LGS regulate the "National Subsidies Database" (BDNS), which operates as a national advertising system for all subsidies (art. 18.1 LGS).

According to article 20.1 of the LGS: "The National Subsidy Database aims to promote transparency, serve as an instrument for public policy planning, improve management and collaborate in the fight against subsidy fraud and public aid." (section 1). According to article 20.2, second section of the LGS: "The content of the Database will include, at least, reference to the regulatory bases of the grant, call, program and budget credit to which they are imputed, object or purpose of the subsidy, identification of the beneficiaries, amount of subsidies granted and actually received, refund decisions and sanctions imposed."

With respect to the information that the City Council should make public based on the provision of article 15.1.c) of the LTC, specifically, the identity of the natural or legal persons who are the beneficiaries of grants granted, in the event that the grant to which the consultation refers to the AMPAs of school centers in the municipality as recipients, it seems clear that the City Council should make public, in accordance with this regulatory provision, the identity of the beneficiary legal entity (the AMPA itself), and not from people related to it, specifically, the monitors who provide services there.

Thus, at the outset, it should be considered that the "beneficiaries" are the natural or legal persons who, in accordance with the regulatory bases of the corresponding aid or subsidy, apply for these aids. According to article 11 of the LGS:

"1. The person who has to carry out the activity that founded his award or who is in the situation that legitimizes his concession will be considered a beneficiary of subsidies.

2. When the beneficiary is a legal entity, and provided that this is provided for in the regulatory bases, the associated members of the beneficiary who undertake to carry out all or part of the activities that justify the granting of the grant in number and by account of the former will also have the consideration of beneficiaries. (...)."

At the outset, it does not appear that certain persons hired by an AMPA beneficiary of a grant (such as monitors) should be considered "associate members" of the AMPA and, therefore, may also have the qualification, of "beneficiaries" (eg art. 11.2 LGT). In any case, this is a matter that must be specified in the regulatory bases of each subsidy.

For all this, in the event that the regulatory bases of the subsidy -which are not attached to the consultation of the City Council-, have determined that the applicants and therefore, if applicable, the beneficiaries of the subsidies are the AMPA of school centers in the municipality, in principle it would be the data of these legal entities, to which the subsidy is granted, which should be the subject of publicity based on the provision of article 15.1.c) of the 'LTC.

IV

Having said that, based on the information available, the City Council would have informed the affected person that the reason why their data would appear on the City Council's website is due to the application of Law 38/2003, of 17 of November, general subsidies (henceforth, LGS), and other applicable regulations, as well as the General Ordinance on Subsidies of the City Council, "when listed as a creditor of the justification of a subsidy granted to the AMPA of the School", in reference to the affected person.

Based on the information available, the City Council would have explained to the affected person that the subsidy justification form must include the name of the creditor and the amount being justified. The City Council would have indicated to the affected person, according to the information provided, that in said model "we have checked that the ID column is anonymized", complying with data protection regulations, according to the consultation.

As has been said, article 15.1.e) of the LTC provides that the obliged subjects (in this case, the City Council), must make public information on "The justification or withholding of accounts by the beneficiaries of the grant or aid granted."

Based on the information available, the consultation bases the dissemination of data from creditors (the AMPA monitors), in the regulatory provisions on the justification of public subsidies, specifically, in article 30 of the LGS, according to which:

"1. The justification of compliance with the conditions imposed and the achievement of the objectives foreseen in the act of awarding the subsidy will be documented in the manner determined by the regulations, being able to cover the form of an account justifying the expenditure made or crediting said expenditure by modules or through the presentation of accounting statements, as provided in the regulatory regulations.

2. The submission of the supporting account constitutes a mandatory act of the beneficiary or the collaborating entity, in which must be included, under the responsibility of the declarant, the proof of expenditure or any other document with legal validity that allows to prove the fulfillment of the object of the public subsidy. The form of the supporting account and the deadline for rendering it will be determined by the corresponding regulatory bases of public subsidies.

In the absence of provision of the regulatory bases, the account must include a statement of the activities carried out that have been financed with the grant and its cost, with the breakdown of each of the expenses incurred, and its presentation will be made, at most, in the period of three months from the end of the period for carrying out the activity.

3. The expenses will be credited by means of invoices and other documents of equivalent probative value with validity in commercial legal traffic or with administrative effectiveness, in the terms established by regulation. (...).

6. The members of the entities provided for in section 2 and second paragraph of section 3 of article 11 of this Law will be required to comply with the justification requirements regarding the activities carried out in number and on behalf of the beneficiary, in the manner in which determined in the previous sections. This documentation will form part of the justification that the beneficiary who requested the grant is required to provide.

7. The subsidies that are granted in response to the occurrence of a certain situation in the receiver will not require any other justification than the accreditation by any legally admissible means of said situation prior to the concession, without prejudice to the controls that could be established to verify its existence.

8. The failure to comply with the obligation to justify the grant in the terms established in this chapter or the insufficient justification of the same will lead to reinstatement under the conditions provided for in article 37 of this Law."

The verification of the appropriate and correct justification of the subsidy by the beneficiaries referred to in the LGS corresponds, in accordance with article 32.1 of the LGS, to the granting body, in this case the City Council.

In this context, the City Council must have the information that allows it to carry out an effective control of the justification of the subsidy by the beneficiary entity, in this case,

the AMPA This would include the information available to the AMPA that is related or linked to the subsidy, such as, for the information available, certain data on the monitors hired by the AMPA to carry out the subsidized activity, which are necessary for this purpose of control, taking into account the principle of minimization (art. 5.1.c) RGPD).

In this sense, we cannot rule out that, indeed, the AMPA must communicate to the City Council the personal information that is relevant for the purposes of controlling the justification of the subsidy, such as the identification data of certain hired persons, as they could be, for the information available, the monitors hired by the AMPA in relation to the provision of the object of the subsidy, and the corresponding remuneration.

According to article 71.1 of Royal Decree 887/2006, of July 21, which approves the Regulations of the LGS (RLGS): "The justification of the subsidy will have the structure and scope determined in the corresponding regulatory bases. "

According to article 72 of the same RLGS, to which the query also refers:

"The supporting account will generally contain the following documentation:

1. A memorandum of action justifying the fulfillment of the conditions imposed in the granting of the grant, with an indication of the activities carried out and the results obtained.
2. An economic report justifying the cost of the activities carried out, which will contain: a) A classified list of the expenses and investments of the activity, with identification of the creditor and the document, its amount, date of issue and, where appropriate, date of payment If the subsidy is granted according to a budget, the deviations that have occurred will be indicated. b) The invoices or documents of equivalent probative value in commercial legal traffic or with administrative effectiveness incorporated in the relationship referred to in the previous paragraph and, where appropriate, the documentation certifying the payment. (...)."

Likewise, according to article 32.1 of the General Ordinance on Subsidies, of the City Council: "Beneficiaries are obliged to justify the performance of the activity for which the subsidy was granted, as well as compliance with the its purpose, the conditions imposed and the intended objectives."

According to article 33 of the aforementioned Ordinance: "The justification of the subsidies by the beneficiary will have the structure and scope that is determined in the corresponding Regulatory Bases or act of concession, and can be carried out through the modalities that relate then: (...)."

The consultation does not provide the regulatory basis for it and, therefore, it is not known in which specific modality, of those provided for in article 33.1 of the Ordinance, the subsidy in question is framed. In any case, the aforementioned article 33.1 provides, for all types of subsidy, that the beneficiary (in this case, the AMPA), must provide, among others, a "Jus

of the fulfillment of the conditions imposed in the regulatory instruments of its concession, as well as of the activities carried out, the participants and the results obtained."

Given these regulatory provisions, it is clear that the information relating to the monitors hired by the AMPA to carry out the subsidized activities (name and surname and amount received by them) must be part of the documentation sent by the AMPA to the City Council, in compliance with the duty of justification and withholding of accounts for the subsidy received by the AMPA.

Therefore, as the query points out, the name and surname of the monitors hired by the AMPA, as well as the amount received by them as creditors, should be included in the information provided by the AMPA to the City Council, for the purposes compliance with the aforementioned regulatory

Now, for the purposes of interest in this opinion, the AMPA must communicate the data subject to consultation to the City Council, for the purposes of controlling the subsidized activity (eg art. 30 LGS and art. 72 RLGS) , does not necessarily imply that these data (name and surname, and remuneration received by the hired monitors) must necessarily be disseminated on the City Council's website, in compliance with the obligations of active advertising (eg art

As has been said, the LTC establishes in article 15.1.e) an active advertising obligation regarding subsidies and public aid detailing what information must be made public (art. 30 LGS and art. 72 RLGS), and with an express provision for publicity of the justification or withholding of accounts made by the beneficiaries of the subsidy, in this case, the AMPA or the beneficiary AMPAs.

However, as this Authority has done on previous occasions (among others, in Reports IAI 10/2017 or IAI 30/2017, which can be consulted on the Authority's website, www.apdcat.cat), the provision to make public the justification or withholding of accounts in Article 15.1.e) LTC, should not be understood as a general authorization to publish each and every one of the documents provided by the beneficiaries of a certain subsidy or public aid, which may contain information of various kinds, including personal data, even of categories specially protected by the regulations (art. 9 RGPD).

Taking into account the principle of minimization, the information relating to the justification or withholding of accounts that the City Council disseminates in compliance with the duty of transparency (art. 15.1.e) LTC), should include only the personal data that is necessary for these purposes

In general terms, it could be sufficient in order to comply with the obligations of active advertising in the subsidized activity, that the City Council, as an obligee, publishes the audit report resulting from the internal control or the review it will have carried out of the supporting documentation provided by the AMPA, as beneficiary of the subsidy. In this report, which should be published by the City Council, and given the information available, in principle it would not seem necessary to include the personal identifying data of the monitors who have been hired by the AMPA, but it could be disseminated on the website of the City Council this information in an anonymized form. In other words, the number of people hired and the amounts received by the people hired by the AMPA could be published, without necessarily identifying th

This, without prejudice to the fact that the City Council must access all the information necessary to exercise control over the grant, including the identity of the monitors hired and the remuneration received by them, as has been said.

In short, it cannot be concluded that in the examined case the provision of article 15.1.e) of the LTC is a sufficient enabling rule, for the purposes of article 6.1 of the RGPD, to disseminate the identity of the monitors contracted by the AMPA and the amount received by them, individually, on the City Council's website.

In accordance with the considerations made in these legal foundations in relation to the consultation on the publication on the City Council's website of the monitors who appear in a supporting account of a grant awarded to the AMPA of a school in the municipality , the following are done

Conclusions

Taking into account the principle of minimization, it cannot be considered that article 15.1.e) of the LTC is a sufficient enabling rule for the City Council to disseminate in the examined case the identity of the monitors and the amount received by them, as individualized, in compliance with the obligation of active advertising. This without prejudice to the fact that the City Council must access the identity of the monitors hired by the AMPA and the remuneration received for

Barcelona, January 14, 2021