CNS 23/2021

Opinion in relation to the query made by the data protection delegate of a city council on requests for access to judgments.

A query from the data protection delegate (DPD) of a city council is presented to the Catalan Data Protection Authority in which he raises different questions about requests for access to judgments by citizens and municipal councilors .

The DPD explains that in response to the various requests for information, both from individuals and councillors, about judgments in which both the City Council and individuals are affected, it requests a legal opinion on the following points:

"- The obligation or not to anonymize the data of the professionals involved in the process such as solicitors, lawyers, secretary and judges, in addition to the parties, when a judgment is requested.

- The obligation to anonymize the document and the criteria for considering whether or not the right to information is denied, specifically whether there is an obligation to deliver a judgment when the interest of the document or the purpose of a Councilor's inspection is questionable when makes the request, but there is no sensitive data, it is given anonymized and it is transferred to the possible individuals affected who do not express their opposition

- Understanding that the judgment is a public document, and in the event that it is not relevant, you can answer that there are other ways to obtain this information, such as accessing legal databases. But on the other hand, the judgments themselves allude to the current regulations to prohibit the communication of a document classified as reserved."

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

I

(...)

II

The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), defines the processing of data as "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, modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enablement of access, comparison or interconnection, limitation, suppression or destruction" (article 4.2).

The RGPD establishes that all processing of personal data must be lawful, fair 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 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).

In the case we are dealing with Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), regulates and guarantees the transparency of public activity and the right of access to people to public information and documentation.

Article 2.b) of the LTC defines public information as "the information prepared by the Administration and that which it has in its possession as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law". In this regard, Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC) specifies that the public information subject to the right of access includes all information, any data or documents that the public administrations have prepared, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."

The judgments of the Courts and Tribunals referred to in the query, and in general any judicial resolution, despite not being information prepared by the City Council, will be public information in accordance with the definition of article 2.b) of LTC , to the extent that it is information that is in the possession of the City Council for having intervened as a party in the corresponding judicial processes, and, regardless of its degree of public relevance, it will be subject to the right of access provided for in the LTC.

With respect to public information, article 18 of the LTC establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legally constituted legal person" (paragraph 1).

However, the right of access regulated by the LTC is not an unlimited right, but in accordance with article 20 et seq. of the LTC, this right can be denied or restricted for the reasons expressly established in the laws, specifically articles 23 and 24 of the LTC regulate the limits to access to public information when the information to which you want to access contains personal data.

III

In order to answer the first of the questions on which the pronouncement of this Authority is requested in relation to the need to anonymize the judgments, the data of the professionals involved in the process such as solicitors, lawyers, secretaries and judges, in addition to the parties and the applicable weighting criteria, the general regime applicable to requests for access to information containing data is first analyzed personal data made by any citizen in accordance with the regime established by the LTC.

It should be noted that the judgments may contain, in addition to the data of the parties in litigation, and the data of the judges or magistrates, lawyers and solicitors, to which the query refers, data of other third parties as well as data that directly or indirectly allow to identify the public employees or public positions that have intervened in the administrative procedure of the one that is the cause of the sentence.

At the outset, according to Article 23 of the LTC, requests for access to information must be denied if "the information to which access is sought contains particularly protected personal data, such as those relating to ideology, trade union membership, 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 person affected expressly consents to it by means of a written document that must accompany the rec

It will be necessary to take into account the matter on which the judgments are requested, to determine whether the personal data contained in them can be considered special categories of data in the terms of article 23 LTC. In cases where this is the case, the transparency regulations establish that access to the information must be denied. However, from the point of view of the right to data protection, there should be no problem in providing this information prior to the anonymization of personal data.

With respect to the information that makes it possible to identify the public employees or public positions that have intervened in the administrative procedure that gives rise to the sentence, it must be taken into account that in accordance with article 24.1 of the LTC to give access to public information if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case the protection of personal data or other constitutionally protected rights.

In this sense, article 70.2 of the RLTC specifies what is meant by merely identifying personal data in the following terms:

> **"For the purposes of what is provided for in article 24.1 of Law 19/2014, of December 29, personal data consisting of the name and surname, the position or position held, body and scale, the functions performed and the telephone and addresses, postal and electronic, of professional contact, referring to staff in the service of public administrations, senior positions and managerial staff in the public sector of public administrations.**

In cases where the publication or access to an administrative document requires the identification of the author, the location data, the number of the national identity document or equivalent document must be removed in particular and the handwritten signature.

If the signature is electronic, the electronically signed document must be published in such a way that the properties of the electronic certificate used for the signature cannot be accessed.

The location data must be deleted in the event that it is not merely identifying data of the author in his position of position or staff in the service of public administrations."

Consequently, if, eventually, in the judgments the identification data of public employees or positions that have intervened in the procedure that gives rise to the judgment were collected, access to this information could be given and therefore the anonymization of 'this data.

With respect to the rest of the information that does not have the consideration of special categories of data under the terms of article 23 of LTC that may contain the requested sentence, a reasoned weighting must be carried out between the public interest in the disclosure of the information and the rights of the affected persons taking into account, among others, the circumstances provided for in article 24.2 of LTC, the following:

a) The elapsed time.

b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.

c) The fact that it is data relating to minors.

d) The fact that it may affect the safety of people.

In the same sense, article 15.3 of Law 19/2013, of December 9, on transparency, access to public information and good governance, establishes:

""When the requested information does not contain specially protected data, the body to which the request is directed will grant access after sufficiently reasoned weighing of the public interest in the disclosure of the information and the rights of those affected whose data appear in the requested information, in particular your fundamental right to the protection of personal data.

In order to carry out the aforementioned weighting, said organ will particularly take into consideration the following criteria:

a) The minor damage to those affected derived from the passage of the periods established in article 57 of Law 16/1985, of June 25, on Spanish Historical Heritage.

b) The justification by the applicants of their request in the exercise of a right or the fact that they have the condition of researchers and motivate the access for historical, scientific or statistical purposes.

c) The least prejudice to the rights of those affected in the event that the documents only contained data of a purely identifying character.

d) The greater guarantee of the rights of those affected in the event that the data contained in the document may affect their privacy or security, or refer to minors."

It is therefore appropriate to weigh up the damage that could be caused to the right to data protection of the holders contained in the requested information in the event that access is granted, and the benefits that for the interest public can be derived from giving access to this information to the person who requests it, taking into account the aforementioned criteria, among which the purpose of access is particularly relevant.

In weighing the rights at stake with regard to the name and surname data of magistrates and judges, it must be taken into consideration that both the Spanish Constitution (art. 120) and the Organic Law of the Judiciary (art. 232.1) the general principle of the publicity of judicial proceedings is included.

The same preamble of the Organic Law of the Judicial Power (LOPJ) makes it clear that "the basic system of entry into the judicial career is still that of open opposition between law graduates, completed by the approval of a course at the study center judicial and with the practices in a jurisdictional body" and also that "the regulation of the judicial career is carried out under the basic criterion of its homologation with the common norms that govern the rest of the public officials, maintaining only those peculiarities that they derive from their specific function".

In addition, information about judges and magistrates is public since the appointments of members of the judicial career to a judicial body appear in the Official State Gazette (article 319 of the LOPJ establishes that the appointment of judges and magistrates is the subject of advertising in the BOE).

In fact, the General Council of the Judiciary has, on its website, a public directory where you can consult the names of the Judges or magistrates of each of the existing courts.

These criteria must be assessed together with the criterion of the purpose of access which, in the absence of a specific purpose that can be stated in the request for access, will be applicable the purpose of the transparency law itself which is none other than establishing a system of relations between people and the public administration and the other obliged subjects, based on the knowledge of public activity, the encouragement of citizen participation, the improvement of the quality of public information and of administrative management and the guarantee of retention of accounts and responsibility in public management.

From this point of view, the right of citizens to be able to identify and control the action of justice through the people in charge of its application, show that in the

weighting of the different rights and interests at stake, there is no special harm to the privacy of the affected persons, which data are contained in the judgments as a result of the functions they carry out as members of the judiciary, the knowledge of which may be useful for the purposes of control and transparency of public activity and therefore, in this case, the right of access to their identifying data must prevail. In this sense, the knowledge of the author of the judicial resolution allows to know not only the intervention of a certain judge or magistrate in a matter or a set of matters, but it can also be useful for power purposes know or compare the follow-up of a certain line of jurisprudence.

A similar criterion could be followed in relation to the judicial secretaries referred to in the query (current Lawyers of the Administration of Justice) who, in accordance with article 442 of the Organic Law of the Judiciary "will be selected through call from the Ministry of Justice, through the opposition systems, which will be the ordinary system of entry, or open contest-opposition, which will have an exceptional character and in which the knowledge tests will have a similar content to those of the opposition free Both procedures must guarantee, in any case, the principles of equality, merit, capacity and also of publicity, in the form in which this organic law and the regulatory provisions that develop it provide. Therefore, the identification data of these officials, in the event that they are collected in the sentence, may be communicated without the need for anonymization.

On the contrary, with regard to the lawyers and solicitors who have been able to intervene in the judicial proceedings and therefore appear in the judgment, it does not seem that from the point of view of the control of the administration it is relevant to reveal the information about their identity and , in principle, in the absence of a specific purpose that could justify access, this informati

IV

With regard to the personal data of the parties in the process, and also of other third parties who may appear in the judgments, it must be taken into account that the RGPD extends its scope of protection to personal data understood as all information on an identified or identifiable natural person, and considers an identifiable natural person "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 several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person" (Article 4.1 of the RGPD).

Therefore, the data of legal entities are excluded from this scope of protection, as specified by the RGPD itself, by establishing that "the protection granted by the present Regulation must be applied to natural persons, regardless of their nationality or your place of residence, in relation to the processing of your personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details. (Recital 14).

In this case, the main element to be taken into consideration when making the weighting required by article 24.2 LTC is that the regulation contained in the judicial regulations already establishes that access to the text of the judgments can only be made with the previous anonymization of personal data. Thus, Organic Law 6/1985, of July 1, of the Judiciary, in article 235 bis, establishes that "access to the text of the sentences, or to certain ends of them, or to other resolutions issued in the without the process, it can only be carried out after the dissociation of the personal data that they contain and with full respect for the right to privacy, the rights of persons who require a special duty of protection or the guarantee of the anonymity of the victims or prejudiced, when applicable".

Exceptions to this rule are included in article 235 ter of the Organic Law of Power Judicial, which provides for:

"1. Access to the personal data contained in the judgments of the final convictions, when they had been handed down under the crimes provided for in the following articles, is published:

a) Articles 305, 305 bis and 306 of Organic Law 10/1995, of November 23, of the Penal Code.

b) Articles 257 and 258 of Organic Law 10/1995, of November 23, of the Penal Code, when the defrauded creditor had been the Public Treasury.

c) Article 2 of Organic Law 12/1995, of December 12, on Smuggling Suppression, provided that there is a detriment to the State Public Treasury or the European Union.

(...)"

Likewise, it must be taken into consideration that the LTC itself considers that certain judicial decisions may have public relevance and for this reason foresees their publication. Thus, within the obligations of active publicity, article 10.1.h) LTC requires administrations to make public "Administrative and judicial resolutions that may have public relevance and final judicial resolutions that affect the persons obliged to comply with this law and draft regulations." Now, paragraph 3 of the same article 10 of the LTC establishes that "the information must not include personal data or references". In other words, the publication of judicial decisions with public significance must be done anonymously.

In order to facilitate elements that public administrations can take into consideration in order to determine when it can be understood that judicial decisions have public relevance, article 40 of the RLTC establishes:

"1. For the purposes of letter h) of article 10.1 of Law 19/2014, of December 29, to assess the existence of public relevance of administrative and judicial resolutions, public administrations must take into consideration, among others:

a) the value, volume and quantity of the goods or services affected or potentially affected;

b) the effect on the validity or interpretation of the provisions of a general nature;

c) the impact on any of the legal assets and matters referred to in articles 36 to 38 of this decree;

d) the establishment of a change or a novelty in the previous legal doctrine;

e) the impact or interest of the public in general, beyond the impact or interest of the parties directly involved in the procedure or process, and

f) the impact on matters in relation to which the legal system provides for public action, among others.

2. Definitive court rulings that affect the persons required to comply with Law 19/2014, of December 29, must be understood as the final court rulings issued by any jurisdictional body and that have as their object compliance or breach of Law 19/2014, of December 29, by the persons responsible.

3. For these purposes, a summary or extract of the content of these administrative and judicial resolutions must be published, as well as a link to the full text.

4. The publication must be carried out with the prior anonymization of the information on natural persons."

In accordance with this, in general it can be concluded that from the point of view of the right to data protection, the prior anonymization of judgments with regard to litigating parties that are natural persons and third parties is required that may be included.

However, it cannot be ruled out that in some specific case in which the personal situation of the person requesting the information, given their status as an interested person or high interests expressed in their request, access can be justified to the personal information contained in the judgment. In these cases it would be necessary to transfer the request to the affected third parties in accordance with the provisions of article 31 of LTC according to which: "If the request for public information may affect the rights or interests of third parties, d in accordance with the provisions of this law, in the event that the potential affected are identified or are easily identifiable, they must be forwarded the request, and they have a period of ten days to present allegations if these they can be decisive for the meaning of the resolution.

However, as stated, the general criterion will be the anonymization of the information. Anonymization means data processing that breaks the chain of identification of the affected person for all actors so that the data can no longer be attributed to an identified or identifiable natural person (consideration 26 RGPD) .In this sense, it must be borne in mind that, so that the anonymization can be considered sufficient for the purposes of the data protection regulations, this must be carried out in such a way as to eliminate the information that makes it possible to identify directly or indirectly the affected people

For this purpose, it is not enough to eliminate the elements that can be used to directly identify a person, their first and last name, nor to replace these with initials or the shading of these

data, but it is also necessary to eliminate those other references that the text may contain and that indirectly or through the context allow its identification.

v

In the event that the request for access is made by a municipal councilor, it must be taken into consideration that the first additional provision of the LTC establishes that "Access to public information in matters that have an access regime established special is regulated by their specific regulations and, additionally, by this law". Therefore, if the person requesting the rulings has the status of councilor of the City Council, the special regime of access regulated in the local regime legislation will apply, fundamentally, Law 7/1985, of 2 d April, regulating the bases of the local regime (LRBRL) and Legislative Decree 2/2003, of 28 April, which approves the revised text of the Municipal and Local Government Law of Catalonia (TRLMRLC) and additionally the transparency regulations.

It should be noted that this Authority has had the opportunity to analyze in previous consultations the right of access of councilors to the information available to their corporation, necessary for the exercise of the functions that correspond to them (among others, in the opinions CNS 38/2010, CNS 13/2013, CNS 24/2015, CNS 80/2016, CNS 10/2017 or CNS 29/2018, available on the website http://apdcat.gencat.cat).

As can be seen from these opinions, and for the purposes that are now of interest, it is appropriate to agree that the right of access to municipal information corresponds to the councilors and not to the municipal group. Also that the recognition of this right is for all members of the City Council, therefore, regardless of the fact that they are in the government team or in t
Thus, article 77 of the LRBRL establishes that "all members of the local Corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the Corporation's services and resulting necessary for the development of its function. The request to exercise the right included in the previous paragraph must be resolved motivatedly within five natural days following the one in which it had been presented."

The TRLMRLC pronounces itself in the same sense by providing, in its article 164.1, that "all members of local corporations have the right to obtain (...) all the background, data or information held by the services of the corporation and are necessary for the development of its function."

However, this does not mean that this right of councilors is an absolute right. If it conflicts with other rights, it will be necessary to weigh the different rights at stake, in order to decide which should prevail and to what extent.

Point out that access requests may be denied when any of the circumstances provided for in articles 164.3 of the TRLMRLC and 8.1 of the ROM occur. But access could also be denied, given the nature of the right to data protection (STC 292/2000), when, regardless of whether certain data can be considered intimate or not, there are other specific circumstances related to data personal reasons that justify it, such as, especially, that the information contains special categories of data or others that

require special protection (data relating to minors, people in a situation of social vulnerability, data relating to the commission of crimes or administrative offences, etc.).

In accordance with the principle of data minimization, 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" (Article 5.1.c) RGPD).

This principle implies, on the one hand, that access to municipal information that includes certain personal data, without the consent of those affected, must necessarily be linked to the exercise of the functions that correspond in each case to the councilor of which it is treated, in the terms provided for in the local regime legislation.

The application of the principle of data minimization implies that the processing of essential data to fulfill the purpose is justified. Therefore, this entails carrying out, in each specific case, a weighting exercise in order to evaluate the implications that the exercise of the councilors' right of access to information may have for the rights of the people affected.

The Authority points out, as elements to be considered when carrying out this weighting - which corresponds to the City Council, as responsible for the treatment (Article 4.7) RGPD) - the personal data contained in the information or documentation requested, the intended purpose, the terms in which the request is made, the possible subjects affected or other circumstances of the specific case.

It has also maintained, and maintains, especially when the information contains intimate data or special categories of data, that in some cases the possibility of providing the information in an anonymized form, that is to say without reference to data, should not be ruled out personal data, if this possibility does not detract from the legitimate purpose provided for by the LRBRL and the rest of the aforementioned local regulations.

This possibility, which is not required in general and will have to be assessed in each case, could be relevant in those cases in which a satisfactory response can be given to the councilors' request without including specific data that can identify or make identifiable natural persons (consideration 26 RGPD).

In any case, the councilor requesting information must be granted, at least, the same guarantees regarding access to information as other citizens who do not have this condition of elected office. Therefore, in the case subject of the consultation when the request for access to the judgments is made by a municipal councilor, they must be recognized as having the right to access the data of judges, magistrates, administrative lawyers of justice and of public employees or positions that have intervened in the procedure of what is the cause of the sentence, as we have already explained above, with regard to the rest of the citizens.

With respect to the rest of the information that contains personal data, it will be necessary to weigh the different rights at stake in order to assess the implications that the exercise of the right of access to councilors' information may have, in the right to protection of the personal data of the affected persons and, ultimately, in order to decide which should prevail and to what extent.

In accordance with article 19.1 of Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL), the government and municipal administration corresponds to the City Council, - integrated by mayor and councilors-. Councilors are part of the City Council, and as such are not properly a third party "stranger" to the relationship between the physical persons who hold the data and the City Council itself and will be able to access the information that it deals with these people at all times that this is necessary for the development of the

It should be borne in mind that the positions elected as a result of their integration into the municipal assembly participate in a public action that manifests itself in a wide range of specific matters derived from the functions attributed to this body in article 22 of LBRL, among which, the control and supervision of governing bodies, the determination of own resources of a tax nature; the approval and modification of the budgets, and the disposition of expenses in matters of their competence and the approval of the accounts, as well as the exercise of judicial and administrative actions and the defense of the corporation, among others.

In the exercise of these functions entrusted to them, it cannot be ruled out that it may be necessary for them to access information relating to the other party litigating or even to data of third parties that may appear in the requested judgments, especially when it comes to judgments in relation to acts adopted by bodies of which they are part, or in respect of which the law foresees that they must be informed (mayoral decrees).

It should be noted that local regime legislation and the jurisprudence of the Supreme Court show that it is not necessary to require councilors to explain or substantiate the purpose of their request, in order to access municipal information, since the reason for their request must be understood as implicit in the exercise of their functions as councilors, who are responsible for the control and supervision of the governing bodies of the corporation, as explained in the article 22.2 a) of the LRBRL.

Now, interpreting the provisions of local regime legislation and the jurisprudence of the Supreme Court, in connection with the RGPD and with the need to circumscribe access to personal data within the framework of a legitimate purpose, it could be convenient that the councilors, when making the request for access to information that contains personal data, in this case to a certain sentence, specify in relation to the purpose for which they are requesting this access and/or the terms of their sole · request, in order to facilitate the weighting that the City Council, as responsible, must carry out to assess the relevance of access to certain personal data, based on the aforementioned principle of data minimization.

It should be remembered that whenever the councilors' access to personal data is carried out due to the functions entrusted to them, they must be governed by the duty of reservation imposed by the local regulations (article 164.6 TRLMRLC), and by the duty of confidentiality imposed by the data protection regulations, (Article 5.1.f) of the RGPD and Article 5 LOPDGDD).

VI

In relation to the last of the questions raised, it must be taken into consideration that the criteria set out, from the point of view of the data protection regulations, are applicable regardless of the public significance that the judgments may have.

Finally, the DPD proposes that "the judgments themselves allude to the current regulations to prohibit the communication of a document cataloged as reserved." We understand that it refers to the text that includes the following sentences: "The interested parties are informed that their personal data have been incorporated into the file of matters of this Judicial Office, where they will be kept confidential and solely for the fulfillment of the work that has been entrusted, under the safeguard and responsibility of the same, where they will be treated with the utmost diligence. They are informed that the data contained in these documents are reserved or confidential, that the use that can be made of them must be exclusively limited to the scope of the process, that their transmission or communication by any medium or procedure is prohibited and that they must be treated exclusively for the purposes of the Administration of Justice, without prejudice to the civil and criminal responsibilities that may arise from an illegitimate use of them (Regulation EU 2016/679 of the European Parliament and of the Council and Organic Law 3/2018, of 6 December, protection of personal data and guarantee of digital rights)"

This reference is part of the fulfillment of the obligations of information to the parties about the processing of their data and about the reserved and confidential nature of the information that is part of the judicial process that corresponds to the judicial administration, as responsible of the treatment, in accordance with the Organic Law of the Judiciary and the data protection regulations.

However, these considerations do not in any case prevent the application of the transparency regulations (LT and LTC) which will be required, in the terms set out in this opinion, when one of the parties is an entity subject to the obligations contained in the same.

Conclusions

The data protection regulations do not prevent access to the identification data of judges or magistrates or of public employees or positions that had intervened in the procedure of what is the cause of the judgment contained therein.

In accordance with the data protection regulations, the general public's access to judgments must be carried out as a general rule with the prior anonymization of the personal data of the parties or other third parties, as well as well as the identification data of solicitors and lawyers who have participated in the process.

Councilors have the right to access the information necessary for the exercise of the functions attributed to them by local regime legislation. This may mean that, after weighing the concurrent circumstances, they may access the personal data contained in the judgment relating to the litigant or other third parties, especially when it comes to judgments imposed in relation to acts adopted by bodies of which they are part or of which they must be informed. However, especially when it comes to intimate information or that requires special protection, access may be denied or, where appropriate, the information may be provided in an anonymized manner.

Barcelona, April 28, 2021