

**CNS 24/2021**

**Opinion in relation to the consultation of a City Council on the issuance of flyers and registration certificates covering all the people registered in the same address, at the request of any of them and without requiring their authorization**

**A letter from a City Council is presented to the Catalan Data Protection Authority, in which an Opinion is requested from this Authority in relation to the issuance of flyers and registration certificates covering all people registered in the same address, at the request of any of them, stating only the names and surnames and without requiring their authorizations.**

**Specifically, and following several indications that, according to the City Council, are pronounced in a different sense, the opinion is requested regarding the criteria expressed by this Authority in Opinion CNS 43/2017, in relation to the requests for flyers and of registration certificates by one of the registered persons.**

**Having analyzed the request, which is not accompanied by more information, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, the following is ruled.**

**I**

**(...)**

**II**

**The consultation refers to the issuance of flyers and registration certificates including all the people registered in the same address at the request of any of them, stating only their first and last names and without requiring their authorizations (their consent), given the indications that, according to the consultation, are pronounced differently on this issue.**

**On the one hand, the consultation refers to the Resolution of February 17, 2020, of the Presidency of the National Institute of Statistics and the General Directorate of Cooperation Autonomous and Local, by which technical instructions are given to the councils on the management of the Municipal Register, which, according to the Council, establishes that it is necessary to have the consent of all those registered in the housing, or to have a legitimate interest, which will require in each case a weighting judgment by the City Council.**

**The consultation cites Report 013704/2019, of November 18, 2019, of the Spanish Data Protection Agency (AEPD), which, according to the consultation, is pronounced in the same sense as the aforementioned Resolution.**

**On the other hand, the consultation cites Opinion CNS 43/2017 of this Authority, which, according to the consultation, concludes that "including the first and last names of all persons registered in the same address, at the request of a of them, it would not be contrary to the data protection regulations".**

The consultation asks this Authority for clarification on whether the City Council could manage, in accordance with the law and the applicable regulations, the issuance of flyers and registration certificates including all the people registered in the same address, on request of any of them, stating only the names and surnames and without requiring their authorizations.

Based on the consultation in these terms, it is necessary to start from the basis that the communication of personal data contained in the Municipal Register of Inhabitants is a processing of personal data, subject to data protection regulations, specifically, to Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (RGPD), and Organic Law 3/2018, of December 5, of Protection of personal data and guarantee of digital rights (LOPDGDD).

Regarding the legality of the treatment (art. 5.1.a RGPD), article 6 of the RGPD provides the following:

"1. The treatment will only be lawful if at least one of the following conditions is met: a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures; c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment; d) the treatment is necessary to protect the vital interests of the interested party or another natural person; e) 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; f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

(...)." Machine

In accordance with this, the processing of personal data carried out by the City Council in relation to the issuance of registration certificates or flyers, in particular, the communication of the first and last names of the persons registered in an address upon request of one of them, may be lawful if there is a sufficient legal basis, either the consent of the rest of those affected, or one of the other legal bases of article 6.1 GDPR.

### III

The Municipal Register of Inhabitants is configured as a register of an administrative nature regulated by Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL).

According to article 16.1 LRBRL, "1. The municipal register is the administrative register containing the residents of a municipality. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"

In the same sense, article 40.1 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC): "The municipal register is the administrative register containing the residents of a municipality. The data contained in the register constitute proof of residence in the municipality and usual address. The certifications issued by the town councils on this data have the character of a public document and, consequently, enjoy the presumption of veracity and prove the data recorded in them, for all administrative purposes.(...)."

In accordance with these forecasts, it is necessary to analyze what is the regime of access provided for in the regulatory regulations of the municipal register.

#### IV

The LRBRL and, in the same sense, the TRLMRLC, establishes the obligation of all residents to register in the Register of the municipality where they have established their residence with a triple purpose: to determine the population of the municipality, to be required to acquire the condition of neighbor, and serve to prove residence and usual address (arts. 15 and 16 LRBRL).

With regard to the purposes of the Municipal Register, they are clearly set out in Constitutional Court Judgment 17/2013, of January 31:

"The administrative register containing the residents of a municipality, a register managed by the local councils through computerized means (art. 17.1 LRBRL) in which the persons residing in a municipality must be registered with a triple purpose, according to the arts. 15 and 16 LRBRL, determine the population of the municipality, acquire the status of neighbor and accredit residence and usual address. In addition to these functions, the electoral regime legislation provides for the preparation of the electoral census based on the data contained in the Register, which also serves to prepare official statistics subject to statistical secrecy.

So, from the regulation of the LRBRL itself we can conclude that the register contains an organized set of personal data referring to identified physical persons, the residents of a municipality, being therefore a personal data file to which the regulations provided for in the LOPD."

Regarding access to the data contained in the register, according to article 16.3 LRBRL:

"3. The Municipal Register data will be transferred to other public administrations that request it without prior consent of the affected person only when they are necessary for the exercise of their respective powers, and exclusively for matters in which the residence or the domicile are relevant data. They can also be used to prepare official statistics subject to statistical secrecy, in the terms provided for in Law 12/1989, of May 9, of the Public Statistics Function and in the statistics laws of the autonomous communities with competence in the matter."

Reference must be made to sections 2 and 3 of article 40 of the TRLMRLC:

"40.2 The data contained in the municipal register are confidential. Access to this data is governed by the rules governing citizens' administrative access to archives and public records and by Law 5/2002, of April 19, of the Catalan Data Protection Agency.

**40.3 Without prejudice to the provisions of section 2 and without requiring the consent of the person concerned, the data of the register may be communicated to other public administrations that request it, when they are necessary to exercise the respective powers, and exclusively for the matters in which it is relevant to know the residence or address."**

**Article 13 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC) recognizes in section d) the right of access "to public information, archives and records , in accordance with the provisions of Law 19/2013, of December 9, on transparency, access to public information and good governance and the rest of the Legal Order."**

**In the area of Catalonia, it is necessary to take into account Law 19/2014, of 29 December, on transparency, access to public information and good governance (LTC), specifically, the first additional provision of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), which provides:**

**"2. Access to public information in subjects that have established a special access regime is regulated by their specific regulations and, additionally, by this law."**

**In the same vein, article 53 of Royal Decree 1690/1986, of 11 July, which approves the Regulation of Population and Demarcation of Local Entities (RPDTEL).**

**Having said that, the regulations provide that registered persons can request certificates (art. 53.1 of Royal Decree 1690/1986, of July 11, which approves the Population and Demarcation of Local Entities Regulation (RPDTEL). RPDTEL), or registration flyers, which are documents of a purely informative nature, according to article 61 RPDTEL.**

**The Town Councils are in charge of managing the Municipal Register and, therefore, of issuing or issuing the corresponding certificates (for the purposes of accrediting), or flyers (for the purposes of informing), about the residence or usual address of the people registered in a certain address.**

v

**As this Authority has agreed in Opinions CNS 43/2017, to which the query refers, CNS 45/2017, or CNS 38/2018, which can be consulted on the website [www.apdcat.cat](http://www.apdcat.cat), the fact that it is one of the persons registered in a home who requests registration information about the rest of the registered persons, could provide sufficient legal authorization for the communication of the identification data of the other registered persons.**

**Thus, and without prejudice to the possibility of any person to access their own personal data recorded in the municipal register (eg art. 15 RGPD), a person registered in a home can obtain from the City Council a document in which all registered persons are included, for the purposes of certifying residence and habitual address, a purpose that would be framed within the provisions of article 16 LRBRL and 40 TRLMRLC.**

**This, as long as there is a legal basis that enables the communication, either the consent of the other registered persons (art. 6.1.a) RGPD), either because the treatment is necessary to satisfy legitimate interests pursued by the person in charge of the treatment or by a third party, in the case at hand, the person requesting the information from the Register (art. 6.1.f) RGPD).**

That is to say, not only the consent of all affected persons can enable the communication of the data (name and surname of the rest of the registered persons), but also the legal basis provided for in article 6.1.f) RGD, without having to have the consent of the rest of those affected, in the case raised in the consultation, in which one of the registered persons requests a certificate or a registration flyer.

However, according to article 6.1.f) RGD, data processing would only be lawful if: "the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests are not the interests or fundamental rights and freedoms of the interested party that require the protection of personal data prevail, in particular when the interested party is a child."

As was agreed in the aforementioned Opinion 43/2017, the provision of article 6.1.f) of the RGD is not a novelty, but prior to this rule, this same legal basis was already provided for in article 7.f) of Directive 95/46/CE, of direct application in Spain, as recognized by the Judgment of the Court of Justice of the European Union of November 24, 2011.

In fact, as indicated in Opinion 43/2017 (FJ IV), in accordance with article 7.f) of Directive 95/46/EC, "(...) the treatment would be lawful when this is necessary for the satisfaction of a legitimate interest of the person responsible for the treatment or of a third party, provided that the rights and interests of the affected persons must not prevail."

That is to say, the provision of article 7.f) of the Directive already referred -as does article 6.1.f) of the RGD- to the legality of the treatment based on the legitimate interest, always that the rights or interests of those affected should not prevail.

In any case, in accordance with article 6.1.f), in the face of requests for certificates or flyers that entail access to the data of the rest of the people registered at the same address, it must be taken into account and weighted the circumstances and competing interests in each case.

Thus, the same RGD, in its recital 47, in relation to the concurrence of legitimate interest as a legal basis, emphasizes that: "the existence of a legitimate interest would require a meticulous evaluation, including if an interested party can foresee in a reasonable way, at the time and in the context of the collection of personal data, that the treatment can take place with such an end. (...)".

Therefore, when a person registered in a residence requests a registration certificate or flyer including all registered persons on the basis of a legitimate interest (e.g. art. 6.1.f) RGD), the City Council, as to the data controller (art. 4.7 RGD), must carry out a weighting of interests that determines whether the legitimate interest of the applicant is prevalent and, therefore, a sufficient basis for carrying out the treatment that is intended to be carried out completed (issuing the certificate or leaflet including the name and surname of the other registered persons).

It should be clarified that although in principle the legal basis provided for in article 6.1.f) is not applicable to the treatments carried out by public authorities in the exercise of their functions (art. 6.1 if), it is possible to appeal to this legal basis when it comes to communications of data to private subjects in which there is a legitimate interest that must prevail over the rights of the persons affected (Additional Tenth Provision of Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights (LOPDGDD). That is to say, that in a case like the one we are dealing with, communication of data to the applicant for the certificate or flyer based on a legitimate interest

of this, in principle the legal basis of article 6.1.f) could be applied. It will therefore be necessary to make the weighting required by this article.

In the weighting or weighing test required by the application of Article 6.1.f) the criteria defined by the Article 29 Working Group (WG 29), which analyzed the application of the 'legitimate interest' in the "Opinion 06/2014 on the concept of legitimate interest of the data controller under Article 7 of Directive 95/46/EC".

These criteria, which were already applicable based on article 7 of the Directive, can be transferred to the regulation contained in article 6.1.f) of the RGPD to determine whether, in view of the specific circumstances of the case ( the rights and interests involved, the reasonable expectations that those affected may have in their relationship with the person in charge and the safeguards offered by the person in charge), it is appropriate or not to resort to this legal basis.

To carry out the weighting of interests and determine whether there is a legitimate interest that can justify the processing of the data, the legitimate interest of the person in charge or of third parties must be taken into consideration; the impact of the treatment on data subjects; and finally the additional guarantees that apply to the treatments.

In accordance with the principle of proactive responsibility (art. 5.2 RGPD) and transparency (art. 5.1.a) RGPD), this analysis process must be properly substantiated and detailed, in order to provide transparency and legal certainty to affected, as well as to review and verify compliance and adequacy with what was determined, when necessary.

As set out in Opinion 6/2014, quoted, which is extensible to the analysis of the concurrence of the legal basis of Article 6.1.f) RGPD: "(...) before an operation of treatment based on article 7, letter f), the person responsible for the treatment has the responsibility to evaluate if he has a legitimate interest, if the treatment is necessary for said legitimate interest and if said interest prevails over the interests and rights of those affected in that specific case."

In accordance with the right to information provided for in article 13 of the RGPD, the person responsible, in this case, the City Council, must provide the interested parties with all the information specified in that article and which, for in the case of treatments based on article 6.1.f), it will also require identifying the legitimate interests of the person in charge or of a third party, in the case at hand, of the person registered in a domicile, who requests the certificate or flyer including the identification data of the people who are also registered there.

In view of this, with regard to the different weighting elements that should be taken into account for the purposes of Article 6.1.f) RGPD, we refer to the considerations already made in Opinion CNS 43/2017 (FJ IV), which result from application in the case raised:

"First of all, note that the person requesting the registration certificate or flyer is one of the people registered in the address, and that he is doing so on the basis of need and with the purpose of certifying the residence of the persons who reside in the same address.

There is therefore a clear legitimate interest in the applicant, which would be framed within the exercise of the right of access to archives and records recognized in article 13 of the LPAC, 16 LBRL and 40 TRLMRLC.

Remember that in accordance with articles 16 LBRL and 40 TRLMRLC, the data contained in the register constitute proof of residence in the municipality and

habitual residence and this is precisely one of the purposes that would justify the collection of data from each of the residents of the municipality.

Point out that the City Council is the competent administration in charge of the management and processing of the municipal register, and in the exercise of its functions it is their responsibility to provide the registered persons with the necessary data to accredit or inform about the residence or usual address of the registered via the corresponding

Now, if the purpose is to accredit or justify the residence and habitual address of the registered persons, the information provided should be limited to the data strictly necessary to achieve the intended purpose. In this sense, it is considered that this would be achieved with the first and last names of the people registered in the same address. The rest of the identifying data (DNI number) as well as other personal characteristics (sex, nationality, date and place of birth, etc.) that are collected in the Register and that appear in the indicative certificate or flyer registration of the annexes of the Resolution, would be excessive and the eventual access by the applicant would not conform to the principles of proportionality and minimization. (...).

Secondly, make it clear that the information on the name and surname of the people registered with the applicant constitutes personal information of the applicant. Knowing that a person shares a home with others would affect all the people who live there, so it would not seem logical to attribute to one of them (the registered applicant) the status of a third party in the face of eventual access to this information.

Thirdly, and when assessing the repercussions that this access would have for the affected third parties, note that the applicant's access to the names and surnames of the people who are registered and reside in the same address, it would not involve the disclosure of any personal information that is not already known to him, and therefore, the degree of interference on the privacy of these people is minimal. At the same time, the fact of informing one of these people about the data necessary for the purposes of certifying the residence and habitual address of the registered persons would fall within the reasonable expectations of any of the affected persons."

Taking into account all these elements, the weighting must be decided in favor of the possibility of carrying out the treatment consisting in the issuance of a registration certificate or flyer including all the people registered in the same housing based on legitimate interest.

We can reach the same conclusion in accordance with the provision of article 40.2 of the TRLMRLC, in this case by virtue of the legal basis provided for in article 6.1.e) RGPD, which refers to the transparency legislation for which regarding access to the data contained in the Register.

The weighting required by article 24.2 of the LTC must necessarily be decided in favor of access to this information, in the terms indicated, given the elements exposed that make the legitimate interest of the sun prevail bidder, respecting the right to data protection for the rest of those registered in the same address. In this sense, insist that despite the fact that it is about access to the data of other cohabiting persons, it must be considered that certain information relating to the other cohabiting persons is also part of the information relating to the applicant himself . The fact that a person lives or has lived with a certain person, or with several people, provides information about the applicant. Not only because of living with other people, but because the specific identity of these people also gives us information about the person requesting the certificate. Thus, the right of access to one's own information contained in Article 15 RGPD would also support the proposed communication of data. 7

## VI

**These considerations, relating to the weighting of the legitimate interest as a legal basis in the case at hand, are not distorted by the provisions of the "Resolution of April 29, 2020, of the Undersecretariat, by which the Resolution of February 17, 2020, of the Presidency of the National Institute of Statistics and of the General Directorate of Autonomous and Local Cooperation, by which technical instructions are issued to the Town Councils on the management of the Municipal Register" (hereinafter, the Resolution ), to which the query refers.**

**Specifically, refer to section 8.1.1 of the Resolution:**

**"(...).**

**The certificates accredit, and the flyers inform, only the residence in the municipality and the domicile of the inhabitant, as well as other facts related to the registration and of which the City Council has official records: initial and end dates of the registration in the municipality, addresses in those who have been registered, due to the addition or removal from the Register, etc. In any case, the additional information of each registered person will be filled in strictly to the extent that it is relevant for the purpose for which the certification has been requested.**

**(...).**

**The issuance of comprehensive certificates and flyers for all the persons registered in the same address, insofar as it involves the processing of personal data (which includes their communication), must be based on one of the assumptions provided for in the article 6.1 of the General Data Protection Regulation. Therefore, when requested by an individual, it will be necessary to have the consent of all those registered in the home (article 6.1.a) or to have a legitimate interest that prevails over the interests or fundamental rights and freedoms of those affected (article 6.1.f), which will require in each case a weighting judgment on the part of the City Council.**

**(...).**

**As for the weighting of interests judgment on the part of the City Council, it is necessary that it has all the necessary information that it supposes, not only to know the purpose for which the data is requested, but, very especially, the impact that it may have in the sphere of those affected, the communication of their data, which implies the fulfillment of the duty of information at the time of registration provided for in article 13 of the General Data Protection Regulation and the possible exercise by those affected of their right of opposition under article 21 of the same."**

**Thus, the Resolution makes clear the need that, in those cases where access to data of other registered persons, at the request of a registered person at home, is based on the legal basis of article 6.1.f ) RGPD, the corresponding weighting judgment is carried out, to be able to determine whether the communication of the data of those affected is lawful.**



In any case, in addition to the weighting elements analyzed in this opinion, and which in principle may lead to admitting the prevalence of legitimate interest, it must be taken into account that in certain cases exceptional situations may arise that lead to consider that the communication of the names and surnames of the registered persons does not comply with the requirements of the data protection regulations, and that therefore the legal basis of article 6.1.f) RGPD does not apply.

In this sense, the Resolution itself points out some cases (section 8.1.1), such as the case in which, despite the fact that the applicant for the certificate is registered in the same home, a deregistration file has been initiated or is in the process of being initiated ex officio for not residing there.

Beyond the concurrence of these specific cases to which the Resolution refers, the City Council will have to take into account, where appropriate, other concurrent circumstances in each case, for the purposes of the above-mentioned weighting judgment.

Precisely for this reason, special mention must be made of the need to inform the affected persons (art. 13 RGPD), as well as the possibility of those affected to exercise their right of opposition (art. 21 RGPD), following an application for a certificate or flyer that includes all registered persons, by a registered person.

In this sense, we note that the Resolution itself provides the following (section 8.1.1): "When the registrations are prior to the entry into force of the General Data Protection Regulation and no information has been given of the possible transfer of data of those affected to a third party with a legitimate interest (even if the authorization of those registered in the same dwelling granted in the registration is not available), before proceeding to the issuance of the registration certificate or flyer, must comply with the duty of information for the purposes of carrying out the above-mentioned weighting judgment."

In accordance with the considerations made in this opinion in relation to the query raised, the following are made,

#### **Conclusions**

The inclusion of the names and surnames of all registered persons in the same address in the registration certificates or flyers, at the request of one of the registered persons, can be based on the consent of all the persons affected or, in the absence of consent, in the legitimate interest of the person requesting, unless there are circumstances in the specific case that, after making the appropriate weighting, must lead to the prevalence of the right to the protection of the personal data of the other affected people.

For these purposes, it is of particular importance to inform the affected persons of the communication prior to the effects that they may exercise, where appropriate, the right of opposition.

Barcelona, May 18, 2021