

CNS 28/2021

Opinion in relation to the consultation of a Regional Council on the transfer to the City councils data on the beneficiaries of social services

A letter from the County Council is presented to the Catalan Data Protection Authority, referring to the communication, to the County Councils, of personal data protected by Organic Law 3/2018, Protection of Personal Data and Guarantee of Digital Rights (hereinafter, LOPDGDD).

The consultation refers to the participation and shared responsibility of the councils in relation to the provision of the service to people domiciled in the municipality, and the legitimacy based on the supervisory functions that the legal system attributes to the councils in terms of the management of their financial resources, as well as the responsibilities of the County Council as responsible and transferor of this data.

The consultation is accompanied by a copy of the collaboration agreement between the County Council and eleven town councils in the county, on the delegation of municipal powers of social services (November 18, 2013).

With all this, taking into account the applicable regulatory framework, the County Council requests a report "relating to the legal basis and the obligation to communicate personal data of a protected nature by the County Council to the county councils about the beneficiaries of social services of the respective municipalities in which the terms of this communication are stated (contents and justification of the request, documentation and contents and justification of the resolution) in accordance with the Agreement established with these municipalities (which is attached)."

Having analyzed the request, 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 communication of personal data to the City Councils of people who are beneficiaries of social services, taking into account the participation and shared responsibility of the city councils in relation to the provision of these services, to the supervisory functions that the legal system attributes to them with regard to the management of its financial resources, as well as the responsibilities of the Regional Council as responsible and transferor of this data.

With the consultation in these terms, it is necessary to start from the basis that, according to article 4.1) of Regulation (EU) 2016/679, of April 27, general data protection (RGPD), they are personal data. any information about an identified natural person or identifiable ("the interested party"); every person will be considered an identifiable natural person whose identity can be determined, directly or indirectly, in particular by means of a identifier, como por ejemplo a number, an identification number, data from

location, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person;

The processing of data (art. 4.2 RGPD) of natural persons registered in the municipalities of the county, who are beneficiaries of social services by the County Council is subject to the principles and guarantees of the personal data protection regulations (RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), to which the query refers).

In order for the processing to be lawful (art. 5.1.a) RGPD), in accordance with article 6 RGPD, the data must be processed with the consent of the interested party or "on some other legitimate basis established in accordance with Right, either in the present Regulation or by virtue of another Union or Member State Law to which the present Regulation refers, including the need to comply with the legal obligation applicable to the person responsible for the treatment or the need to execute a contract in which the interested party is a party or with the purpose of taking measures at the request of the interested party prior to the conclusion of a contract" (Considering 40 RGPD).

Specifically, according to article 6.1 RGPD:

"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;

(...)

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;

(...)."

According to article 6, paragraph 3, of the RGPD:

"The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) the Law of the Union, or

b) the law of the Member States that applies to the person responsible for the treatment.

The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of conferred public powers to the person responsible for the treatment. (...)."

To this it should be added that, according to article 8.2 of the LOPDGDD: "2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016/679, when derives from a competence attributed by a rule with the force of law."

It is therefore appropriate to analyze the regulatory framework applicable to the matter to determine if there is a legal basis, specifically, based on article 6.1.e) RGPD, for the processing of data in the case raised in the consultation.

III

Since the query refers to the processing of data for the provision of social services, it is necessary to take into account the regulatory framework applicable to the case, specifically, Law 12/2007, of October 11, on social services (in forward, LSS).

The LSS, which aims to regulate and order the system of social services in order to guarantee universal access and ensure that social services are provided with the requirements and optimal quality standards necessary to guarantee the dignity and the quality of life of people (article 1), foresees the involvement of the different Public Administrations, specifically, of the entities that form part of the Local Administration, in the provision of social services. According to article 15 of the LSS, the public social services system is structured into basic and specialized social services.

According to article 27.1 of the LSS, "the Administration of the Generalitat, the municipalities and the other local bodies of Catalonia are the competent administrations in matters of social services, in accordance with the provisions of this title and, where appropriate, the legislation on territorial organization and local regime."

For the purposes that interest us, article 31.1 of the LSS establishes the powers of the municipalities in the provision of social services, which include those relating to creating and managing the necessary social services, both their own and those delegated by other administrations, in accordance with the Social Services Portfolio and the corresponding strategic plan; establish the centers and services corresponding to the area of basic social services or exercise the functions delegated to it by the Administration of the Generalitat, among others.

Article 34 LSS provides that the basic areas of social services are the primary unit of social care for the purposes of the provision of basic social services, they are organized on a minimum population of twenty thousand inhabitants, based on the municipality, and must group municipalities with less than twenty thousand inhabitants. In this case, "management corresponds to the county or the associative entity created especially for this purpose" (art. 34, section 3 LSS).

Thus, apart from the specific powers referred to in article 32 of the LSS, it should be borne in mind that section 2 of article 31 also attributes powers to the counties for the provision of basic social services in municipalities of less than twenty thousand inhabitants:

"2. The counties replace the municipalities with less than twenty thousand inhabitants in the ownership of the competences specific to the basic social services that these municipalities are not in a position to assume directly or jointly.

Therefore, we see that the LSS envisages that county councils have powers in the management of social services. Thus, it is anticipated that the supra-municipal body will replace the municipality's own powers in certain cases.

In relation, then, to the provision of social services in municipalities of less than twenty thousand inhabitants, as would be the case at hand, and in the terms provided for in

applicable, the Regional Council would be the one competent to manage the basic social services that the municipalities are not in a position to undertake. In principle then, in the analyzed case the County Council would be the competent body for the management of basic social services.

IV

We start from the basis that the processing of personal data must have a person in charge (art. 4.7 RGPD), which assumes a series of responsibilities and obligations regarding said treatment.

Taking this into account, if the Regional Council is responsible and has the competence over the management of social services in the case at hand, it would also be responsible for the processing of the personal data of the persons affected or beneficiaries of the social services or benefits to which the query refers, or of those other people whose data may be the subject of treatment in this context.

The consultation refers, specifically, to the communication to the town councils of the data of the beneficiaries of social adjustment, to "the supervisory functions that the legal system attributes to the town councils with regard to the management of their economic resources.". Regarding these financing obligations, the Agreement that accompanies the consultation establishes, among other issues, that the municipalities will make financial contributions to finance the management of services in accordance with the criteria established in the annex to the agreement, and they will be proportional to the number of inhabitants of each municipality (clause 4).

We note, at this point, that the Authority has had the opportunity to analyze the communication of data to the town councils in relation to the provision of social services, in Opinions CNS 8/2010 and CNS 22/2018, which result from special interest in the case at hand.

Based on the premise that the county council would be responsible for the treatment, based on the aforementioned forecasts of the sectorial regulations (LSS), it should be taken into account that the communication of data of the beneficiaries of social assistance to the town councils, may respond to the exercise of the powers and functions that the county councils may have, in application of the LSS, in relation to social services (art. 6.1.e) RGPD).

It is necessary to take into account the provisions relating to the financing of social services, in particular, the provisions relating to the financing of basic and specialized social services (articles 62 and 63 LSS, respectively).

According to article 62.1 LSS:

"1. The town councils and the Administration of the Generalitat share the funding of basic social services, including social service teams, programs and projects, the home help service and other services that are determined to be basic. (...). (...).

3. The financing of the infrastructure, the premises, the material, the maintenance of the information system, the administrative support and the economic benefits of social urgency is the responsibility of the local body managing the basic service area social. (...)"

As can be seen from the available information, and within the framework of the forecasts on the financing of social services, it can be understood that, although the provision of social services falls to the county council, the municipalities must pay certain amounts in relation to social services, a circumstance that can legitimize, for the purposes that concern, the communication of data in the case at hand.

Article 60.5 of the LSS provides, in relation to the principles of financing, that municipalities and other local bodies must include in their budgets the allocations necessary to finance the social services under their jurisdiction.

It should also be remembered that, according to article 136 of Law 7/1985, of April 2, regulating the bases of the local regime:

"1. The public function of control and internal auditing of economic, financial and budgetary management, in its triple meaning of auditor function, financial control function and efficiency control function, will correspond to an administrative body, with the name of Municipal General Intervention. (...)"

The Royal Legislative Decree 2/2004, of March 5, which approves the revised Text of the Law regulating local finances, specifies in chapter IV of Title VI, relating to the budget and public expenditure, that local entities exercise the internal control functions with respect to its economic management, of the autonomous bodies and of the commercial companies that depend on them, in its triple meaning of supervisory function, financial control function and effectiveness control function (article 213). In the following articles of this same rule, the scope of application and the modalities of exercise of the three functions (auditor, financial control and effectiveness control) are specified in which the public control function is broken down and internal

Specifically, with regard to the auditor's function, its purpose is to audit all acts of local entities and their autonomous bodies that give rise to the recognition and settlement of rights and obligations or expenses of economic content, the income and payments that derived from them, and the collection, investment and application, in general, of the administered public flows, with the aim that the management conforms to the provisions applicable in each case (article 214.1 of RDL 2/2004). The exercise of this function includes, among others, the formal intervention of the arrangement of the payment and the material intervention of the payment (article 214.2 of RDL 2/2004).

With regard to the financial control function, the purpose of this is to check the operation in the economic and financial aspect of the services of local entities, their autonomous bodies and the commercial companies that depend on them (article 220 of RDL 2/2004). In relation to the control of effectiveness, it aims to periodically check the degree of fulfillment of the objectives, as well as to analyze the cost of operation and the performance of the respective services or investments (article 221 of the same RDL 2/2004).

In short, the forecasts on the financing and on the economic control and inspection functions that the regulations grant to the councils can lead, in the case at hand, to the councils, which participate in the co-financing of basic social services as can be seen of the information available, they must have sufficient information to be able to monitor the appropriate use of the budgeted allocations, for the purposes of dealing with the payment of the services or benefits that, in terms of social services, correspond to them.

This must lead, in short, to the municipalities having to access personal information of the people affected or beneficiaries of aid or social benefits, domiciled in their respective municipalities.

As an example, in order to comply with the purpose of economic control and inspection of the town councils, it could be necessary to communicate to the town hall the identification data of the users of a certain service, as well as the amounts assigned and the amounts paid in each case

The articulation of competences in the matter of social services by the LSS in which there is a shared exercise of competence between different Catalan public administrations, and in which the municipality is attributed an obligation to finance -at least in part- social services basic, together with the legitimate exercise of the function of economic control and inspection, can constitute a legal qualification, in the terms of article 6.1.e) of the RGPD, for the communication of the necessary information to the exercise of the functions that correspond to the municipalities.

At this point, it should be borne in mind that, without prejudice to the fact that there may be a legal basis for processing personal data, data processing is subject to the rest of the principles and obligations of the RGPD, among them, the principle of limitation of the purpose (art. 5.1.b) RGPD), according to which the data must be collected for specific, explicit and legitimate purposes, and must not be subsequently processed in a manner incompatible with these purposes.

For this reason, in order to consider the communication of data between both public administrations (county council and town councils, in this case) lawful, it is necessary that the purpose of the treatment for which the data will be used is compatible with the purpose for which they collected initially.

This follows both from article 5.1.b) of the RGPD itself, and from article 6.4 RGPD, which provides the following:

"4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data were initially collected, will take into account, among other things:

a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided;

b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller;

c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;

d) the possible consequences for the interested parties of the planned subsequent treatment;

e) the existence of adequate guarantees, which may include encryption or pseudonymization.”

At the same time, the communication of data must also take into account what is established in article 155 of Law 40/2015, of October 1, on the legal regime of the public sector, relating to the transmission of data between Public Administrations, according to which:

"1. In accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of individuals with regard to the processing of personal data and the free circulation of these data and because of the repeal of Directive 95/46/CE and Organic Law 3/2018, of December 5, on the Protection of Personal Data and the guarantee of digital rights and its implementing regulations, each Administration must provide the access of the remaining Public Administrations to the data relating to the interested parties in their possession, specifying the conditions, protocols and functional or technical criteria necessary to access said data with the maximum guarantees of security, integrity and availability.

2. In no case may further processing of the data be carried out for purposes incompatible with the purpose for which the personal data were initially collected. In accordance with the provisions of article 5.1.b) of Regulation (EU) 2016/679, the subsequent processing of personal data for archiving purposes in the public interest, scientific and historical research purposes will not be considered incompatible with the initial purposes or statistical purposes.

(...).”

For this reason, in the absence of the consent of the affected persons, or of a rule with the rank of law that foresees or specifies the communication for the purposes of economic control of the contribution of the town councils in the social services provided in the municipality itself, or of inspection, to which reference has been made, it is necessary to make a weighting prior to the communication, on its legitimacy, taking into account the criteria

At the outset, as elements to be taken into account in the case at hand, it must be borne in mind that not only is there a direct relationship between the purpose for which the Regional Council would process the data (the management and provision of its own social service), and the purpose for which the information would be communicated to the county councils (the financing of the service), given that in both cases the data is processed to exercise the respective powers in the field of social services. And not only that, but access to information by the municipalities is a necessary presupposition (funding) for the provision of the service by the county council.

As we have seen, although the management of social services may correspond to the county (art. 31.2 LSS), the councils participate in the service by assuming certain expenses, a circumstance that can legitimize access to information of the beneficiaries of the services.

Therefore, the relationship between the purposes for which the two administrations (county council and town councils) will process the data of the beneficiaries in the case at hand seems clear enough (art. 6.4.a) RGPD).

In addition, taking into account the forecasts analyzed on the financing of the services, it may be foreseeable for the people affected, that the administration that must take charge of the service accesses certain information about the service provided to the inhabitants of their municipality .

Also as an element of weighting (art. 6.4.c) RGPD), the nature of the data subject to communication should be taken into account.

As has been pointed out, it may be necessary for the municipalities to have access to identification or contact data of those affected and the services received on them, among others, to be able to carry out verification functions of the benefits carried out, to calculate and to establish the financial or logistical contributions that must be made to the city council in relation to a certain service or provision, or to ultimately monitor the appropriate use of the allocated budget allocations.

We cannot rule out that, in some cases, the same provision of the service managed by the county council requires the communication to the respective town hall of data of special categories (art. 9.1 RGPD), such as could be, for example, people's health data beneficiaries of certain services. In other cases, the exercise of the council's functions may require the communication of information relating to a situation of social vulnerability, or to vulnerable groups, such as minors. Although the data protection regulations do not grant a special protection regime to these categories of data due to the fact that the holder is a minor or a vulnerable person, in any case this is an element to take into account in the time to weigh whether for the development of the functions of the town councils, it is necessary to communicate this data.

For this reason, and taking into account the special nature of the information processed in this type of service, it does not seem justified a priori the communication of any information available to the social services of the county council, but only the information necessary for the municipality can exercise the functions that correspond to it. Compliance with the principle of minimization would constitute an adequate guarantee for the safeguarding of the rights of the persons affected. We refer to this in the following legal basis.

For all this, and for the information available, it could be considered that in principle the purposes for which the county council and the town councils would process the data of people who benefit from social services are compatible for the purposes of article 6.4 RGPD

Therefore, there would be sufficient legal basis (art. 6.1.e) and 6.4 RGPD), from the perspective of the protection of personal data, so that the County Council can communicate to the county councils the personal data of the beneficiaries of social services, with the purpose of fulfilling the functions of the town councils related to the financing and the control and financial supervision of the contributions of the town councils to the provision of social services.

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Without prejudice to the fact that there may be a sufficient legal basis for the treatment consisting in the communication by the County Council to the county councils of personal information for the purposes referred to (economic control functions and supervision by the councils), it will be necessary also take into account the principle of minimization, according to which the data must be adequate, relevant and limited to what is necessary in relation to the purposes of the treatment (ar

Town councils must be able to access information that is necessary for the exercise of their supervisory functions, to the information necessary to meet the expenses that correspond to them in relation to the provision of social services or

with the control of expenses related to the different aids or benefits in terms of social services that may correspond to it.

In this sense, as agreed in Opinion CNS 8/2010, cited (FJ VII), it could be advisable to establish a protocol to determine, as far as possible, what is the personal information that may be necessary to communicate in each case for the financing of the service - or in relation to the control and supervision of a certain service or social benefit - and, where appropriate, other issues to be taken into account for the purposes of this weighting, relating to the flow of information object of inquiry (type of service or social benefit about which information is requested, number of people affected, groups affected, purpose for which the information is requested, categories of data to be communicated, etc.).

In accordance with the considerations made in this opinion the following are made,

Conclusions

The communication by the county council of personal data of the beneficiaries of social services of the respective municipalities, to the town councils of the county, may have a sufficient legal basis in accordance with article 6.1.e) and 6.4 of the RGPD, without the consent of those affected being necessary, without prejudice to the necessary application of the principles of purpose limitation and minimization.

Barcelona, June 7, 2021