

CNS 29/2021

Opinion in relation to the query made by a city council regarding a request for judicial police access to municipal information.

A consultation by a City Council is presented to the Catalan Data Protection Authority in which it raises different questions about a request for access by the judicial police.

In the consultation it is stated that the City Council has received a request from a local police station, in relation to an investigation carried out by the Local Judicial Police brigade, in which it requests how much information it opens in its bases of data, registration and cohabitation flyers of people who may be registered in a block of buildings located in the municipality. The request does not specify any particular house, but they request information about the entire block of houses, in which more than 70 people live.

In relation to these events, they request answers to the following questions:

"- 1. Taking into account the principle of minimization of personal data, is the request of all people living in an entire block of flats correct? Or should the request specify more specifically what data they are asking for? For example, requesting information about a person or a specific home.

2. We understand that the legal enablement of this processing of personal data (sending the information) should be based on article 6.co 6.e) of the RGPD, compliance with a legal obligation or mission carried out by public interest, and therefore the consent of the holders of the personal data would not be necessary. But what would be the rule with the rank of law that would enable the sending of this personal data?"

Having analyzed the consultation that accompanies the specific request made by the police, in accordance with the report of the Legal Counsel I issue the following opinion:

I

(...)

II

It must be taken into account, first of all, that the request for information that is the subject of the query is carried out by the Local Judicial Police brigade as part of a specific investigation in respect of which the certificate number is indicated.

The Organic Law 2/1986, of 13 of March, of Security Forces and Bodies (LOFFCCS), regulates in its article 53 the functions that correspond to the local police, among which "e)

To participate in the functions of the Judicial Police, in the manner established in article 29.2 of this Law."

With regard to the Judicial Police, article 126 of the Spanish Constitution provides that it depends on the Judges, the Courts and the Public Prosecutor in their functions of investigating the crime and discovering and securing the criminal, in the terms that the law establishes.

Article 547 of Organic Law 6/1985, of July 1, on the Judiciary (LOPJ), provides that:

"The function of the Judicial Police includes assistance to the courts and tribunals and the Public Prosecutor's Office in the investigation of crimes and in the discovery and securing of criminals. This function will apply, when required to provide it, to all members of the Security Forces and Bodies, whether they depend on the central government or the Autonomous Communities or local entities, within the scope of their respective powers.

Article 549.1 of the LOPJ specifies, in the following terms, the functions of the Judicial Police units:

"a) The investigation about those responsible and the circumstances of the criminal acts and the arrest of the first ones, giving an account immediately to the judicial and fiscal authority, in accordance with the provisions of the laws. b) Assistance to the judicial and fiscal authorities in any actions that must be carried out outside their headquarters and require the presence of the police. c) The material performance of the actions that require the exercise of coercion and order the judicial or fiscal authority. d) The guarantee of compliance with the orders and resolutions of the judicial or fiscal authority. e) Any other of the same nature in which his cooperation or assistance is necessary and ordered by the judicial or fiscal authority."

According to Royal Decree 769/1987, of June 19, on the regulation of the judicial police (RDPJ), the general functions of the judicial police correspond to all members of the FFCCS, insofar as they must provide the required collaboration by the judicial authority or the Public Prosecutor's Office in actions aimed at investigating crimes or discovering or securing criminals, with strict subjection to the scope of their respective powers (article 1). It is added that the members of the FFCCS carry out the judicial police function at the request of the judicial authority, the Public Prosecutor or their police superiors, or on their own initiative through the latter, in the terms provided for in the articles following of the RDPJ (article 2 of the RDPJ).

Article 4 of the RDPJ provides that all the components of the FFCCS, whatever their nature and dependency, must practice on their own initiative and according to their respective attributions, the first steps of prevention and assurance as soon as they have news of the perpetration of the allegedly criminal act, and they must occupy and guard the objects that come from the crime or are related to its execution, and it is added that they must give an account to the judicial or fiscal authority, directly or through the organic units of the judicial police.

With regard to the actions of the Judicial Police, article 292 of the Royal Decree of September 14, 1882, approving the Criminal Procedure Law regulates the content of the attestations in the following terms:

"The Judicial Police officers will issue, either on sealed paper or on common paper, a certificate of the diligence they carry out, in which they will specify with the greatest accuracy the facts ascertained by them, inserting the statements and reports received and noting all the circumstances that they had observed and could be proof or indication of the crime.

The Judicial Police will send with the certificate a report giving an account of the previous arrests and the existence of requisitions for their call and search when this is recorded in their databases.

In the case at hand, therefore, the treatment of the requested information, within the framework of a specific investigation by the judicial police, has as its object the investigation of criminal offenses by that judicial police.

In accordance with the provisions of article 2.2.d) of 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 treatment of personal data (RGPD), this does not apply to the processing of personal data "by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal infractions, or execution of criminal sanctions, including that of protection against threats to public security and their prevention." (Article 2.2.d) of the RGPD)

Regarding this, recital 19 of the RGPD specifies that:

"The protection of physical persons with regard to the processing of personal data by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, including the protection against threats to public security and the free circulation of these data and their prevention, a specific legal act at Union level is the object. This Regulation should not, therefore, apply to the processing activities intended for such purposes. However, the personal data processed by the public authorities in application of this Regulation must, if they are intended for such purposes, be governed by a more specific legal act of the Union, specifically Directive (EU) 2016/680 of the European Parliament and of the Advice (1)."

Therefore, in this area, it is necessary to take into account Directive (EU) 2016/680 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data by part of the competent authorities for the purposes of prevention, research, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data and by which Framework Decision 2000/834/CE of the European Parliament and of the Council of December 12, 2000, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions, published in BOE No. 126 of May 27, 2021, and which will enter into force in twenty days from the date of publication in the Official Journal of the European Union.

The transposition of this directive into our legal system has taken place with the recent Law Organic 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions, published in BOE No. 126 of May 27, 2021, and which will enter into force in twenty days from the date of publication in the Official Journal of the European Union.

of its publication, i.e. June 16, 2021. Until then, in accordance with the fourth transitional provision of LOPDGDD, the provisions of Organic Law 15/1999, of December 13, on data protection remain in force of a personal nature (LOPD), regarding the collection and processing for police purposes of personal data by the Security Forces and Bodies,

Given that at the time of issuing this opinion, the LOPD regime is still in force in this area and, in particular, its article 22 and the deployment provisions, the consultation carried out will be analyzed applying this rule in the first place, but the implications of the application of the new regulation provided for in the aforementioned Organic Law 7/2021 from June 16, 2021 will also be analysed.

IV

Regarding the regime established in the LOPD, article 22 establishes the following:

"(...)

2. The collection and treatment for police purposes of personal data by the Security Forces and Bodies without the consent of the affected persons are limited to those cases and categories of data that are necessary for the prevention of a real danger to public security or for the suppression of criminal infractions, having to be stored in specific files established for the purpose, which must be classified by categories according to their degree of reliability.

3. The data collection and processing by the Security Forces and Bodies, to which paragraphs 2 and 3 of article 7 refer, may be carried out exclusively in the cases in which it is absolutely necessary for the purposes of a specific investigation, without prejudice to the control of the legality of the administrative action or the obligation to resolve the claims made in their case by the interested parties who correspond to the jurisdictional bodies.

4. The personal data registered for police purposes will be canceled when they are not necessary for the investigations that motivated their storage.

To these effects, the age of the affected person and the nature of the data stored, the need to maintain the data until the conclusion of a specific investigation or procedure, the firm judicial decision, especially the discharge, the pardon, the rehabilitation will be considered and the limitation of liability."

In accordance with this regulation, the requirements that must be met for the collection and processing of personal data by the FFCCS will be different depending on the type of personal data being processed. Thus, as this Authority has ruled on previous occasions, (among others in Opinion CNS 50/2020 which can be consulted on the Authority's website, www.apdcat.cat) article 22.2 of the LOPD could enable the transfer of certain data that are not data of specially protected categories (art. 7.2 and 3 LOPD) to the FFCCS whenever these are necessary for the prevention of a real danger to public security or for the repression of 'criminal offences, even without the need to link this transfer to a specific investigation or to the performance of judicial police functions by the FFCCS

art. 126 Constitution; arts 574 and 149.1 (LOPJ), art. 282 of the Criminal Procedure Law (LECRIM), and arts. 2 and 4 of Royal Decree 769/1987, of 19 June, regulating the judicial police).

In any case, in order for this transfer to be enabled, it will be necessary to comply with the requirements provided for in said article 22.2 of the LOPD, that is to say, that the request for data is limited to what is necessary for the prevention of a real danger to public safety or to the repression of criminal offences.

For its part, section 3 of article 22 LOPD in the case of data deserving of special protection (art. 7.2 and 7.3 LOPD), establishes a specific requirement for its transfer to the FFCCS in particular, it will be necessary that it is absolutely necessary data and that the transfer is based and justified in the purposes of a specific investigation.

In the case of the request for information from the judicial police that originates the query, the information contained in the municipal database, registration flyers and coexistence flyers of the people who reside in a block of 'houses'.

As for the information contained in the municipal databases, this will be of a different nature. Thus, it cannot be ruled out that among this information there may be data specially protected under the terms of article 7 of the LOPD (such as health data, racial origin or relating to administrative or criminal offences, etc.) , or data deserving of a special reservation or confidentiality due to the concurrence of certain qualified circumstances (for example, situations of social vulnerability, data of minors, data related to gender violence, the possibility of drawing up socio-economic profiles, etc.).

With regard to the specific information on the registration flyers and residence flyers, it must be taken into consideration that Law 7/1985, of April 2, regulating the bases of the local regime (hereafter, LRBRL) is the norm with range of law that regulates the definition, content and obligations in relation to the municipal register of inhabitants.

The LBRRL establishes that the registration in the Municipal Register will contain the following data as mandatory: first and last name, sex, usual address, nationality, date and place of birth, number of the identity document (or, for foreigners, the card residence or identity document number), certificate or school or academic degree, and, finally, those data that may be necessary for the preparation of electoral censuses, as long as fundamental rights are respected (article 16.2 LRBRL). The request for information refers, however, expressly to the information contained in the registration and cohabitation flyers.

Therefore, the request of the judicial police may involve the communication of data of various natures, including data specially protected under the terms of article 7 of the LOPD.

It is worth remembering that article 4.1 of the LOPD regulates the principle of data quality according to which "Personal data can only be collected for its treatment, as well as subject to such treatment, when they are adequate, relevant and not excessive in relation to the scope and the determined, explicit and legitimate purposes for which they have been obtained". This principle, known as the minimization principle, has also been included in article 5.1.c) of the RGPD.

In accordance with this principle and the analyzed provisions of Article 22, the police, within the framework of a specific investigation, as in the case at hand, can collect and process exclusively the data that are appropriate, relevant and not excessive in relation to the specific purposes related to the repression of criminal offenses and, in the case of special categories of data exclusively in the cases in which they are absolutely necessary for the purposes of that investigation.

Regarding this request for information, the city council, as responsible for the treatment, is obliged to ensure the appropriate treatment of the information under its responsibility. Thus, article 5.2 RGPD establishes that "The person responsible for the treatment will be responsible for complying with what is set out in section 1 and capable of demonstrating it ("proactive responsibility")."

This will mean, in the case at hand, that the City Council, before communicating the data, must be able to verify, on the one hand, compliance with the requirements to which the communication is subject, in accordance with article 22 LOPD but also to comply with the minimization principle, according to which: "Personal data will be: (...). adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated" (art. 5.1.c) RGPD

From the point of view of the principle of data minimization, with regard to the information contained in the database of the register contained in the registration and cohabitation flyers of the people who live in the building to which it refers the query, although it affects a large number of people (more than 70 people), does not affect special categories of data and can be considered a request for specific and justified information in the need to identify the people registered in the property that is the subject of the investigation, therefore, in principle, it does not seem that its communication in the context of the consultation carried

In fact, the same LBRL provides in article 16.3 that, "The data of the Municipal Register 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 domicile are relevant data(...)."'

Now, the request for "how much information opens in the municipal databases" referring to the people who have their residence in the identified building, may in principle be disproportionate. It must be taken into consideration, as already explained, that among this information there may be data specially protected under the terms of article 7 of the LPD (such as health data, racial origin or relating to administrative or criminal offenses , etc.). for this type of data, article 22.3 of the LOPD establishes as a requirement for the collection of this data that "exclusively in the cases in which it is absolutely necessary for the purposes of a specific investigation". But in addition, it cannot be ruled out that there are data of minors or data of people who are in a vulnerable situation.

In a case where the request for information is made as generic as that described in the consultation, so that the City Council can adequately comply with the principle of minimization, it should have sufficient information to determine the scope of communication. And therefore, it would be advisable for the city council to ask the police for clarification or clarification on the type of information they want to know that may be relevant to the investigation being carried out.

It should be remembered that, according to article 5.2 of the LOFFCCS in relation to the basic principles of action of FFCCS members:

"1 The following are basic principles of action for members of the Security Forces and Bodies: (...).

2. Relations with the community. Singarily:

(...). b) (...). In all their interventions, they will provide complete information, and as wide as possible, about the causes and purpose of the same."

As this Authority has done in advance, in the face of any request for information made by the FFCCS that is not clear enough - either in relation to the specific functions performed by the police force that requests the information, either in relation to the personal information that is specifically required, the requested entity must be able to request clarification from the police force before communicating it.

This specification should cover not only the necessary categories of data, but also greater precision in the affected persons, in the event that the information already provided by the City Council on the Municipal Register of Inhabitants makes it possible to specify more the persons about whom the information must be requested.

Without clarification in writing about the reason and purpose of the request, about what personal data is requested and, if ~~a plausible path to the affected persons can be difficult~~, the City principles of protection of mentioned data.

From what has been presented, it can be concluded, in response to the second of the questions posed in the consultation, that article 22 of the LOPD constitutes the legitimate basis for data processing which consists in the communication of information to the judicial police necessary for a specific investigation. And, with regard to the information that can be provided from the point of view of the minimization principle, to which the first of the questions refers, it could be concluded that the communication of the information from the database of the register in the registration flyers and coexistence flyers could be considered adequate to the purposes and not excessive. Now, with regard to the request for the information operating in the municipal databases, without specifying the types of data necessary for the purposes of the judicial investigation carried out, it may be disproportionate, which is why it seems advisable only - request a clarification from the judicial police that justifies the types of data requested.

v

It is also necessary to take into account the recent approval of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions, (hereinafter LO 7/2021), in force from next June 16. The purpose of this Organic Law, according to what is established in its article 1, is to regulate the fundamental right to the protection of personal data in relation to the processing of data carried out by the competent authorities for the purposes

detection, investigation or prosecution of criminal offenses or enforcement of criminal sanctions, as well as protection and prevention against threats against public security.

Article 2 of this rule regulates its scope of application which is determined by the total or partially automated processing of personal data as well as the non-automated processing of personal data included or intended to be included in a file, carried out by the authorities competent for the purposes of the Organic Law, which would include the judicial police.

Article 7 of LO 7/2021 establishes the obligation of public administrations to collaborate with the judicial authorities, the Public Prosecutor's Office or the Judicial Police, for the purposes covered by the rule, in the following terms:

- 1. The public administrations, as well as any natural or legal person, will provide the judicial authorities, the Ministry of Justice or the Judicial Police with the data, reports, antecedents and supporting documents that they request and that are necessary for the investigation and prosecution of criminal offenses or for the execution of penalties.**

The request of the Judicial Police must be adjusted exclusively to the exercise of the functions entrusted to it by article 549.1 of Organic Law 6/1985, of July 1, and must always be carried out in a motivated, concrete and specific way, giving account in any case to the judicial and fiscal authority.

The communication of data, reports, antecedents and supporting documents by the Tax Administration, the Social Security Administration and the Labor and Social Security Inspectorate will be carried out in accordance with their respective legislation.

- 2. In the remaining cases, the Public Administrations, as well as any natural or legal person, will provide the data, reports, background and supporting documents to the competent authorities that request them, provided that these are necessary for the specific development of their missions for the prevention, detection and investigation of criminal offenses and for the prevention and protection against a real and serious danger to public security. The request of the competent authority must be concrete and specific and contain the motivation that accredits its relationship with the indicated cases.**

- 3. The provisions of the previous sections shall not apply when the judicial authorization is legally required to collect the necessary data for the fulfillment of the purposes of article 1.**

- 4. In the cases covered in the previous sections, the interested party will not be informed of the transmission of their data to the competent authorities, nor of having facilitated access to them by said authorities in any other way, in order to guarantee the activity researcher**

With the same purpose, the subjects to whom the legal system imposes a specific duty of collaboration with the competent authorities for the fulfillment of the purposes established in article 1, will not inform the interested party of the transmission of their data to said authorities, nor to have facilitated access to them by said authorities in any other way, in compliance with their specific obligations.

The application of this rule to the case at hand would mean that, in order for the processing of the data that is the subject of the request to be legitimized by the municipality's obligation to collaborate with the Judicial Police, it would be necessary to give the requirements established by article 7.1 of LO 7/2021. Firstly, that the judicial police acted in the exercise of the functions entrusted to them by article 549.1 LOPJ and, secondly, that the request was made in a motivated, concrete and specific manner and giving an account, in any case to the authority judicial

In addition, if the request for information involves the communication of special categories of data, it must be taken into account that this can only be carried out when strictly necessary, subject to adequate guarantees for the rights and freedoms of the interested party and, to more so when any of the circumstances provided for in article 13 of LO 7/2021, which establishes:

"1. The treatment of personal data that reveal ethnic or racial origin, political opinions, religious or philosophical convictions or trade union affiliation, as well as the treatment of genetic data, biometric data aimed at uniquely identifying a natural person, the data relating to the health or sexual life or sexual orientation of a natural person, will only be allowed when strictly necessary, subject to adequate guarantees for the rights and freedoms of the interested party and when any of the following circumstances are met:

- a) It is provided for by a rule with the force of law or by the Law of the European Union.
- b) It is necessary to protect the vital interests, as well as the rights and fundamental freedoms of the interested party or of another natural person.
- c) Said treatment refers to data that the interested party has made manifestly public."

In the event that the requested data contains data of minors or persons with legally modified capacity, the third paragraph of article 13 will apply, which establishes:

"(...) 3. The data of minors and persons with legally modified capacity or who are involved in processes of that nature, will be treated guaranteeing their best interests and with the appropriate level of security. (...)"

As has already been explained, the request that accompanies the consultation is made by the judicial police stating that it is related to a specific investigation and with the corresponding certificate number and therefore, it could be considered that the first of the requirements is met in article 7 LO 7/2021 regarding the collaboration of public administrations with the Judicial Police (action in the exercise of the functions entrusted by article 549.1 of LOPJ).

On the other hand, with regard to the second of the requirements of article 7 LO 7/2021, that is to say that the request is made in a motivated, concrete and specific way, the request can be considered concrete with regard to the data of the municipal registry in respect of which the data of the registrat

and coexistence flyers. Although there is no express motivation, this could be considered implicit in the need to identify the people who reside in the building subject to consultation.

With regard to the communication of the register data, in addition, it must be taken into account that the fourth additional provision of LO 7/2021 provides for access to the register data (DNI, surnames, domicile, sex and date of birth) based on information from the National Institute of Statistics, or equivalent bodies of the autonomous communities, from the files and population registers of the public administrations without the consent of the interested parties and motivated in any of the purposes of the law. Thus this provision provides:

- "1. The competent authorities may request from the National Institute of Statistics and the statistical bodies of the autonomous region, without the consent of the interested party, an updated copy of the file formed with the data of the identity document, number, surnames, domicile, sex and date of birth that appear in the municipal register of inhabitants and in the electoral census corresponding to the territories where they exercise their powers. This request must be motivated based on any of the purposes of prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions, including the protection and prevention of threats against public security.
2. The data obtained will have the sole purpose of fulfilling the purposes of prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions, as well as protection and prevention against threats against public security and communication of these authorities with the interested parties residing in the respective territories, with respect to the legal-administrative relations derived from the respective powers."

However, the request for all the information contained in the municipal databases regarding the people registered in the property subject to the inquiry, as set out in point IV of this opinion, is a generic request and without a specific motivation necessary to comply with the provisions of article 7 of LO 7/2021. In addition, to the extent that it may involve the communication of special categories of data as well as data of minors or persons with judicially modified capacity, the request must properly motivate compliance with the requirements established in article 13 of LO 7/2021, is that is to say, that the processing of data that are considered special categories of data is provided for in a law or that one of the other cases provided for in article 13.1 is met and is strictly necessary for the investigation being carried out. And in the case of the processing of data of minors or persons with legally modified capacity that will be processed guaranteeing the best interest of this and that the appropriate security levels will be applied.

Therefore, and in response to the questions raised in the consultation in accordance with the new regulation, it can be concluded that the obligation of collaboration of public administrations with the judicial police provided for in article 7 LO 7/2021 can constitute a legitimate basis for the treatment with regard to the specific request for information that works in the municipal register. However, without a sufficient motivation and justification it is not considered appropriate to communicate the information that opens in the municipal databases and, in the event that these are considered special categories of data, this motivation must allow to determine whether they provide the requirements provided for in article 13 LO

Conclusions

In accordance with the applicable legislation at the time of issuing this opinion, article 22 of the LOPD would constitute the legitimate basis for data processing consisting in the communication of information to the judicial police necessary for a specific investigation , including the communication of specially protected data. Regarding the data of the register (registration flyers and coexistence flyers) of the residents in a building it can be considered adequate for the purposes of the treatment and not excessive. Now, the request for the information operating in the municipal databases, without specifying the information necessary for the purposes of the judicial investigation carried out, may be disproportionate. In this case, the city council is recommended to request from the judicial police a clarification that justifies the requested information.

The same conclusion would be reached by application of LO 7/2021, effective from next June 16, 2021.

Barcelona, June 9, 2021