

CNS 40/2021

Opinion in relation to the query made by a City Council on the possibility of deleting the data of a former councilor from the municipal website.

A letter from a City Council is presented to the Catalan Data Protection Authority on the possibility of deleting the data of a former councilor from the municipal website.

The City Council is asking whether it should delete the personal data of a former Councilor of the Corporation that appear on the municipal website at the request of the affected person who requests that "references to his person be removed from the municipal website" .

Having analyzed the query, which is not accompanied by any document, in view of the current applicable regulations, and in view of the report of this Legal Advice, I issue the following opinion.

I

(...)

II

In the request for a report, the City Council inquires whether it must delete the personal data of a former councilor of the Corporation that appear on the municipal website at the request of the affected person who requests that "delete the references to your person from the municipal website".

The City Council states that it deleted the data on the former councilor's assets and activities, given that six months had passed since he left office. However, they maintain the publication on the institutional website of the City Council of other data in order to maintain a historical record of the previous mandates. The City Council considers whether it should also remove from the website "other references such as name, profession and delegations" that they had while they held the position in the council.

The City Council has included in its request for a report two links to the City Council's website where the list of people who have occupied City Council offices in the periods from 2012 to 2015, 2015 to 2019 and the current councilors (2019 to 2023).

With regard to the information of the people who occupied the council offices of the City Council in the electoral mandate from 2012 to 2015, the data contained in this institutional information are the first and last names, the municipal group of affiliation, the position that he occupied, in the area of municipal responsibilities, an institutional e-mail and a small list of the functions that corresponded to him in the exercise of the position. Along with this information, there is a photograph of the person who served as councilor of the City Council. Several hyperlinks have been added to this information which, when selected, refer to other public information, such as the case of the position, which refers to the financial remuneration received for the exercise of the position ordered annually, or as in the case of the contact , which refers to a standardized model of the City Council regarding queries, complaints, suggestions or thanks.

For its part, the information on the people who occupied the councilors of the City Council in the electoral mandate from 2015 to 2019, is structured by municipal groups where only the photographs of the councilors appear and, subsequently, a nominal relationship with the municipal group of affiliation. However, both the photographs and the names and surnames contain a hyperlink that refers to the individualized information of the person. This information includes the name and surname, the municipal group of affiliation, the electoral mandate, the position held in the council and the Area of responsibilities with a list of the functions attributed. In addition, information on the profession, an institutional email, a short biography, the declaration of assets and activities, the remuneration and the percentage of dedication to the public activity, if this is partial, are recorded. This information is presided over by a photograph of the councilor in question. As in the previous case, some information is linked to other data or information, such as the case of the declaration of assets and activities that refers to the register of interests and activities.

It is clear that the set of information maintained by the City Council on the corporation's website contains personal data relating to people who have held positions of political responsibility in the last two electoral mandates. And, as personal data that are subject to the scope of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the treatment of personal data and the free movement of such data and which repeals Directive 95/46/EC (General Data Protection Regulation) (hereafter RGPD) and Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights (hereafter LOPDGDD).

III

In principle, it should be noted that according to the principle of limitation of the retention period, established in article 5.1.e) of the RGPD:

"The personal data will be:

(...) e) maintained in a way

that allows the identification of the interested parties for no longer than necessary for the purposes of the treatment of the personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the

application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the conservation period"); (...)"

Regarding this, according to recital 39 of the RGPD: "(...) Personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, to guarantee that its retention period is limited to a strict minimum. Personal data should only be processed if the purpose of the treatment could not reasonably be achieved by other means. To ensure that personal data is not kept longer than necessary, the data controller must establish periods for its deletion or periodic review. (...)"

Article 17 of the RGPD regulates the right to deletion in the following terms:

"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:

a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;

c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;

d) personal data have been treated unlawfully;

e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;

f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.

2. When he has made personal data public and is obliged, by virtue of the provisions of section 1, to delete said data, the person responsible for the treatment, taking into account the technology available and the cost of its application, will adopt reasonable measures, including technical measures, with a view to informing those responsible who are dealing with personal data of the interested party's request to delete any link to those personal data, or any copy or replica thereof.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;

c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;

d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or

e) for the formulation, exercise or defense of claims.

So, it is clear that in the event that there is a rule that obliges to maintain the publication of the information, the request of the former councilor could not be granted. This would happen, for example, if the publication deadline established by the transparency regulations had not passed.

In the query, information is included on whether the person who requested the deletion has given a specific reason. Therefore in this report it will be considered that there is no specific reason.

At this point, it should be remembered that any councilor, as an elected public official, is obliged to support the publication of certain personal data on the Portal due to the requirements of Law 19/2014, of December 29, on transparency, access to public information and good governance while in office. In accordance with articles 13.5 and 13.6 Decree 8/2021, of February 9, on transparency and the right of access to public information, the information to be published must refer to the year in course, and must remain published five years from

The request for an opinion does not state the period in which the person who requested the deletion was a councillor, but in the event that this period of five years has not been exceeded, the information could not be deleted from the transparency portal or the municipal website the information affected by this obligation.

This obligation would not affect, however, certain information that has been verified to be published on the municipal website and that is not required by the transparency regulations, such as the photograph of the councilor, or his contact details by institutional email, which, having ceased to be part of the corporation, would already be out-of-date data.

In addition, as stated, information about the profession and a short biography are also included. The maintenance of the publication of this information can only be considered justified to the extent that it strictly forms part of the professional profile and career that the article

11.1.c) LTC obliges to publish. The rest of the information about the profession or biography should be deleted.

Beyond that, and on the understanding that the publication period established by the transparency regulations has passed, the City Council justifies the maintenance on the municipal website in which it forms part of a history of the councilors of the corporation.

Article 17.3.d) of the RGPD provides for the limitation of the right to delete personal data if, among other purposes, a scientific or historical research purpose coincides with its maintenance, with the limits and conditions established in the Article 89.1 of the RGPD.

Thus, article 89.1 of the RGPD, as far as it is concerned, provides that:

"The treatment for archival purposes in the public interest, scientific or historical research purposes or statistical purposes will be subject to adequate guarantees, in accordance with this Regulation, for the rights and liberties of the interested parties. These guarantees will require that technical and organizational measures are available, in particular to guarantee respect for the principle of minimization of personal data. Such measures may include pseudonymization, provided that in that way said ends can be achieved. As long as those goals can be achieved through further processing that does not allow or no longer allows the identification of the interested parties, those goals will be achieved in that way."

In this sense, it should be noted that the City Council in its consultation does not adduce what historical value the maintenance of the personal data of the former councilor, which has been referred to in legal basis II, may have, nor for what reason it would be relevant to keep them published on the web.

However, in a case such as the one at hand, it seems clear that there may be a historical interest in keeping published certain information about the various people who have been part of the corporation as elected officials. This may include information on the first and last names of councilors and former councillors, the position they held, the municipal group they were part of and the period in which they held the position. But on the other hand, and in accordance with the principle of minimization, this would not justify maintaining the publication of the rest of the information, without prejudice to the fact that, with regard to the rest of the information, the City Council can keep it (unpublished) if there is any legal obligation that justifies it, or keep it blocked (art. 32 LOPDGDD), if applicable, to attend to eventual responsibilities.

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

Conclusions

The City Council may keep published on the portal the information of former councilors of the corporation that is necessary to fulfill the obligations established in the transparency legislation, as long as the publication deadlines provided for in these regulations do not elapse. Instead, it must delete from the municipal website the information published in respect of which this legal obligation does not exist, unless one of the exceptions provided for in article 17.3 RGPD applies.

Once these terms have passed, the historical interest may justify maintaining the publication of the information on the name and surnames of councilors and former councilors, the position they held, the municipal group of which they were part and the period in which they held the position, but not the rest of the information referred to in Legal Basis I

Barcelona, July 29, 2021

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