

CNS 44/2021

Opinion in relation to the query made by a City Council regarding a parent's request for access to a copy of a referral report from basic municipal social services that affects their family unit

A query from the Data Protection Delegate of a City Council regarding a request for access by a parent to a copy of a referral report from social services is presented to the Catalan Data Protection Authority municipal basics that affect your family unit.

In particular, the consultation shows that the City Council has received a request in which a parent requests access to a Referral Report to the EAIA, drawn up by basic social services, in which they report having detected a complex situation and conflicting that affects his family unit, including minors, on which there are sufficient elements that would justify the

Attached to the inquiry is the request submitted by the parent and the referral report to the EAIA on which access is requested and in which certain personal data have been removed.

Having analyzed the request, which is not accompanied by further 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 inquiry raises questions about the possibility of granting access requested by a parent to a copy of a referral report to the EAIA drawn up by the City Council's basic social services, from of which the EAIA is informed of having detected a situation on which there are sufficient elements that would justify its intervention, and which would have a relationship with a complex and conflicting situation in the family unit that would affect minors. In short, as explained, the purpose of the report is to inform the EAIA of the detected risk situation so that, if it deems it appropriate, it can open a file.

As can be seen from the query, and the documentation sent, the referral report of which the parent wants to obtain a copy includes data that is his own and identifying data and personal characteristics of his children, of the other parent (names and surnames, date of birth, address and municipality, DNI, nationality and telephone number), and in addition, the report also details the relationship between the two parents with their children, their actions and

carried out by the City Council's social services. It would also contain information about the parents' partners and their children.

It is worth saying that, in accordance with what is foreseen in the referral report, five children belonging to both parents are identified, some of whom are minors. It must be noted that, at the same time, the report also includes information in relation to other minors, one child of the applicant parent and his partner, and another of the partner of the other parent.

Given the consultation in these terms, it should be borne in mind that, according to Regulation (EU) 2016/679, of April 27, General Data Protection Regulation (RGPD), personal data is "all information about a natural person identified or identifiable ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person".

Therefore, the processing of data (art. 4.2 of the RGPD) of natural persons by the social services is subject to the principles and guarantees of the personal data protection regulations (RGPD and Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights (LOPDGDD)).

The origin of the inquiry is related to the activity of municipal social services, sectoral regulation headed by Law 12/2007, of 11 October, on social services. However, it is worth saying that the object of this opinion is not the analysis from the point of view of the legitimacy of the social services to treat the data (which can find coverage in article 6.1.e) RGPD in relation to social services legislation), or their legitimacy to inform the competent body in matters of protection of children and adolescents of situations of risk or helplessness that they know (in relation to what is provided for in art. 101 of Law 14/2010, of May 27, on rights and opportunities in childhood and adolescence), but the analysis of the parent's right to obtain a copy of a referral report to the EAIA that affects your family unit.

The referral report drawn up by social services includes not only personal information of the requesting parent, but also personal data relating to their children, minors and adults, as well as information relating to the other parent and their respective partners, and the daughter of the partner of the other parent.

In relation to the applicant parent's own data, it is necessary to take into account the right of access regulated in article 15 of the RGPD, whereby:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

a) the purposes of the treatment; b) the categories of personal data in question;

c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations; d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period; e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment; f) the right to present a claim before a control authority; g) when the personal data has not been obtained from the interested party, any available information about its origin; h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others.”

This, taken to the case at hand, would at least entail the right of the requesting parent to have a copy of the referral report from the social services where it affects the personal data belonging to him.

However, it should be borne in mind that this right to obtain a copy must not negatively affect the rights and freedoms of others (art. 15.4 of the RGPD). This limit may be relevant in the case at hand with respect to the possibility of the requesting parent to access information of third parties, such as the information of the other parent and their respective partners, which may be contained in the report of derivation from social services.

III

In relation to the information relating to non-emancipated minor children, this Authority has on previous occasions analyzed the right of parents holding parental authority to access their information (among others, opinions CNS 58/2017, CNS 10/2018 or CNS 9/2019, which can be consulted on the Authority's website www.apdcat.gencat.cat).

Based on the information available - in particular, the content of the referral report prepared by the social services -, it is not known that the requesting parent is in a situation of deprivation of parental authority, or in suspension, in the terms provided by the regulations. This circumstance is relevant from the perspective of their possibility of access to information relating to their children.

Article 231-1 of Book Two of the Civil Code of Catalonia (from now on, CCC), states that parents are the holders of parental authority over unemancipated minor children, which can be extended to older children disability age, extending it or rehabilitating it.

The exercise of parental authority over children entails the legal representation of these (art. 236-18 CCC) except in the following acts (second section of art. 236-18 CCC):

"a) Those relating to personality rights, unless the laws that regulate them establish otherwise
thing

[...]

c) Acts in which there is a conflict of interests between both parents or between the parent exercising authority and the children. [...]."

In accordance with the provisions of article 12.1 of the LOPDGDD, the right of access can be exercised directly or through a legal or voluntary representative. Regarding the holders of parental authority, article 12.6 of the LOPDGDD provides the following:

"6. In any case, the holders of parental authority may exercise the rights of access, rectification, cancellation, opposition or any other that may correspond to them in the context of this organic law in the number and representation of minors under fourteen years of age. [...]"

Therefore, the requesting parent, to the extent that he exercises the legal representation of his minor children, based on the provisions of the regulations, must be able to exercise the rights of informative self-determination on behalf and representation of the minor children of fourteen years of age and, consequently, must be able to have access to the referral report drawn up by social services, with regard to their information.

With regard to children under the age of fourteen but over the age of fourteen, it should be noted that, in general, the conclusion will be the same as that set forth in the case of children under the age of fourteen, although it is appropriate to make some additional nuances.

At this point, reference should be made to the provision of article 7 of the LOPDGDD, whereby:

"1. The treatment of the personal data of a minor can only be based on his consent when he is over fourteen years old.

The cases in which the law requires the assistance of the holders of parental authority or guardianship for the celebration of the legal act or business in whose context consent for the treatment is obtained are excepted.

2. The treatment of the data of minors under fourteen years of age, based on consent, will only be lawful if the holder of parental authority or guardianship is included, with the scope determined by the holders of parental authority or guardianship.”

Thus, to the extent that the data protection regulations have recognized minors over the age of fourteen the possibility of consenting to the processing of their data, as a logical consequence the same regulations recognize the ability to exercise the rights of self-determination informative

However, the fact that the regulations provide for the exercise of the aforementioned rights by minors over the age of fourteen should not lead to the conclusion that parents who have parental authority cannot access the minor child's documentation, until all when this is already a minor over fourteen years old.

It should be added that article 37.7 of LDOIA provides that "Public administrations must ensure the protection of children and adolescents in the case of misuse of parental, guardianship or custody authority, and also because parents, holders of guardianship or those who have custody of them have the opportunities and the means of information and training appropriate to help them fulfill their responsibilities towards children and adolescents [...]". This point could include the need to ensure that the parents can learn about the circumstances detected by the social services in relation to having the appropriate information to help them fulfill their responsibilities as holders of parental authority.

For these reasons, it is considered that in accordance with the aforementioned regulations, the parent would be able to access the information contained in the social services referral report that affects minor children who are over fourteen years of age subject to their authority .

This, without prejudice to the fact that minors over the age of fourteen can also exercise the right of informational self-determination directly (among others, the right of rectification, the right of deletion, the right of opposition or the right to limit treatment).

However, in any of the cases, it must be taken into account that in certain circumstances there may be a conflict of interests between both parents or between the parent exercising authority and the children (paragraph two of art. 238-16 CCC). It must be noted that according to the content of the referral report to which access is sought, it is described that the coexistence of the family unit is conflictual, especially between the two parents.

In relation to this circumstance, it is necessary to take into account article 17.1 of Law 14/2010, of May 27, on rights and opportunities in childhood and adolescence (LDOIA), according to which: "children and adolescents can exercise and defend their rights themselves, unless the law limits this exercise. In any case, they can do it through their legal representatives, as long as they don't have interests that conflict with their own".

According to article 5 of the LDOIA:

"1. The best interest of the child or adolescent must be the inspiring and foundational principle of public actions.

2. Rules and public policies must be evaluated from the perspective of children and adolescents, to ensure that they include relevant objectives and actions aimed at satisfying the best interests of these people. Children and adolescents must actively participate in this assessment.

3. The best interests of the child or adolescent must also be the inspiring principle of all the decisions and actions that concern them adopted and carried out by the parents, by the guardians or guardians, by the public or private institutions in charge of protecting and assisting him or by the judicial or administrative authority.

4. In order to determine the best interests of the child or adolescent, their needs and rights must be taken into account, and their opinion, their wishes and aspirations must be taken into account, as well as the their individuality within the family and social framework".

In accordance with these regulatory provisions, the exercise of the rights of informative self-determination on behalf of minors, which parents or legal representatives must be able to exercise in general, may be limited if the social services consider that there is a conflict between these and the minor himself, in which case the general principle of protection of the minor's best interests must prevail (art. 5 LDOIA), in the terms provided for in the regulations.

The prevalence of this principle could justify limiting the access of parents or legal representatives to the minor's data.

IV

The referral report also contains various information on the applicant's adult children, the other parent, their partners and the other parent's daughter. On the one hand, information relating to identifying data and personal circumstances - name and surname, date of birth, ID, address and municipality, telephone numbers, among others. On the other hand, the report describes situations and circumstances that mainly affect the applicant's children, including those of legal age, which, without having to be the subject of detailed analysis in this opinion, affect data deserving of special protection due to their nature, and which can significantly affect different personal areas, such as the professional, the social or the intimate sphere of those concerned, as well as, in relation only to children of legal age, special categories are also affected of data (Art. 9 of the RGPD), such as data relating to health or data relating to sexual life.

However, it must be noted that, in accordance with what is described in the report itself, the circumstances described, including the information deserving of special protection and the reference to special categories of personal data, would have been provided in the file of the social services by the applicant parent, or by the other parent. Consequently, to the extent that it is information that precisely the requesting parent himself has provided to the social services, a priori it would not seem necessary to limit access to protect this information, when the origin of the same is the person requesting requests the communication of the document that contains it.

The referral report also contains identifying data relating to two minors, different from those analyzed in the previous legal basis, a daughter of the applicant parent and his current partner, and another daughter of the current partner of the other parent

It also contains the assessments and actions taken by the municipal social services in relation to the conflict situation between both parents.

With regard to the information relating to adult children, even if it has not been provided by the requesting parent, it should be borne in mind that under the provisions of Article 15 of the RGPD, the interested party has the right to know the information that may affect you. And in this sense, it is clear that in the case we are dealing with the information contained in the referral report, which aims to inform the EAIA of certain circumstances that could justify its intervention in defense of the interests of minors, is information that affects the parent as holder of parental authority over their minor children, given that what is analyzed in the report is precisely their situation as holder of parental authority. Therefore, accessing this information would be part of the parent's right of access.

Certainly, from the perspective of adult children, granting access to certain information can significantly affect their rights and freedoms, especially in the case of information not provided by the requesting parent. However, in the particular case, given the concurring circumstances and the purpose of the referral report, as well as the effects that the fact that the EAIA initiates a file following the information that may have on the applicant is included in the report, it is considered that the applicant's right of access to know the situations and circumstances described in the report and to be able to defend his rights regarding parental authority before the competent authorities must prevail on the right to data protection of their adult children.

And, in relation to the origin of this information, it is necessary to go to the provision of article 15.1.g) of the RGPD, by which the interested party has the right to know any information available on the origin of the data that affect him. As this Authority has done on previous occasions, through the right of access the interested party not only has the right to know the direct information about his person that is being treated by the person in charge of the treatment, but also has the right to know the origin of the information, among other aspects. This could include the identification of the person who provided this information, be it the other parent, a social services worker, their partner, one of their children, etc.

The right of access cannot negatively affect the rights and freedoms of third parties (art. 15.4 of the RGPD). However, in the case at hand it is not considered that there are circumstances that justify the need to limit access to information relating to the origin.

In relation to access to personal data relating to the other parent, it is considered that access to their first and last name would not pose any problem from the perspective of data protection, insofar as with the provisions of article 236-8 of the CCC, both parents exercise parental authority over the children jointly. In this sense, from the perspective of the requesting parent's right of access, access to this information is considered to belong to the information that is his own and, a priori, there are no reasons to limit his access

However, with regard to the contact details of the other parent, the interference with their right to data protection is greater, especially if we take into consideration the conflict situation referred to in the referral report. On the other hand, in view of the content of the report, it does not seem that this information has any relevance in the analysis of the situation analyzed in the report (and therefore in the situation of the applicant parent). For this reason, and in accordance with article 15.4 of the RGPD, it is considered necessary to limit access to the contact details of the other parent.

Finally, in accordance with what has been explained, the referral report also includes information relating to the partners of both parents, as well as the data of the two minors (a daughter of the applicant parent and her current partner, and the other daughter of the other parent's current partner).

With regard to the personal data of the partner of the applicant parent, and of the daughter of both, from the perspective of exercising the right of access, it is information that belongs to the applicant himself which, a priori, should not be limited to the view of the available information.

In the case of the data relating to the partner of the other parent (with respect to whom the name and surname, year of birth, ID number, address and telephone are collected) and to his daughter (where only the name is collected), given the circumstances involved (these data are only included in the report to describe the current situation in the genogram but are not relevant in the situation described in the report), it is considered that it must be the right to the protection of their data prevails over the right of access of the requesting parent, to the extent that the interference that access would entail would be greater than the benefit it may bring.

Conclusions

The requesting parent has the right to access a copy of the referral report drawn up by social services, except for the information that refers to the other parent's contact details, as well as the partner's details this one and his daughter. This, unless it respects information that affects minor children, access may also have to be restricted in the event that the social services detect that there is a situation of conflict between the interests of the requesting parent and those of the minor children to justify it.

Barcelona, September 2, 2021