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Opinion in relation to the query made by the data protection delegate of a city council on whether access to personal data from the daily updates of the Local Police by deputy mayors of areas external to the Local Police is in accordance with the legality

A query is presented to the Catalan Data Protection Authority by the data protection delegate of a city council on whether access to the personal data of the daily updates of the Local Police by deputy mayors of external areas to the Local Police is in accordance with the law.

In the consultation it is stated that: "Mayoral Decree number 2021AJUN001275 establishes the sending of daily updates from the Local Police to the deputy mayors of the town hall, even if they are not replacing the mayoress at that time ; these developments may contain special categories of data. The decree is based on the authority of the mayor and article 8 of the Police Regulations. It should be noted that the deputy mayors to whom the decree enables to receive these new developments are councilors from other areas external to the Police (social services and culture and festivals and finance), since there is a designated councilor delegated to the local police who is not deputy mayor, and above him is the mayoress, the highest police officer. The query consists of whether the access to personal data of the daily updates of the Local Police by the aforementioned deputy mayors contravenes the legislation on data protection or is in accordance with the law, given the functions of the aforementioned deputy mayors"

Analyzed the consultation accompanying the Mayor's Decree to which the consultation refers and the Local Police Regulations, in accordance with the report of the Legal Counsel I issue the following opinion:

I

(...)

II

The city council's data protection officer is considering whether it is legal for two deputy mayors (who are councilors from other areas outside the Police) to access the local police's daily news releases.

The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD) applies to the treatments carried out on personal data understood as any information "about an identified or identifiable natural person ("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, a

online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person". (Article 4.1 RGPD).

Article 4.2) of the RGPD considers "treatment": any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction".

The RGPD provides that all processing of personal data must be lawful, loyal and transparent in relation to the interested party (Article 5.1.a)) and, in this sense, establishes a system of legitimizing the processing of data which is based on the need for one of the legal bases established in its article 6.1 to apply. Specifically, sections c) and e) of article 6.1 of the RGPD provide respectively, that the treatment will be lawful if "it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment", or if "it 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".

As can be seen from article 6.3 of the RGPD and expressly included in article 8 Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the processing of data it can only be considered based on the legal bases of article 6.1.e) of the RGPD when it is established as such by a rule with the rank of law.

In the case at hand, it can be foreseen that the daily updates of the local police contain personal data of various kinds, both of the officers who provide the service (name or TIP number, shift they perform, etc.) and of the people involved in the facts that are the subject of police actions, such as their identifying data (name and surname, address), or other data related to their personal, social or family situation.

In this context, in order to determine whether the treatment proposed by the city council's data protection delegate in his consultation is lawful, it is necessary to analyze, first of all, whether the legislation of the local regime, fundamentally Law 7/1985, of 2 April, regulating the bases of the local regime (LRBRL) and Legislative Decree 2/2003, of 28 April, which approves the revised text of the Municipal and Local Regime Law of Catalonia (TRLMRLC), constitute a legitimate basis for the treatment in relation to article 6.1.e).

III

Article 53 of the TRLMRLC lists the attributions of the mayor or mayoress of the municipalities, including: "Exercising the superior management of the municipal police, and also appointing and sanctioning officials who carry weapons" 53.1.j)).

Law 16/1991, of July 10, on local police, establishes in article 26:

"-1 The head of the local police force, under the command of the mayor, or of the person to whom he delegates, exercises immediate command of the force.

-2 The highest-ranking staff member is head of the body; in case of equality, it is up to the mayor to make the appointment, in accordance with the principles of objectivity, merit, capacity and equal opportunities. In any case, the head of the body must belong, at least, to the executive level.

-3 The mayor must designate among the members of the highest ranking the person who must replace the head of the body in cases of his absence."

With regard to the functions of the head of the local police force under the command of the mayor, article 27 of the same legal text establishes that he has the following functions:

- "a) Direct, coordinate and supervise the operations of the body, and also the administrative activities, to ensure their effectiveness.
- b) Assess the needs of human and material resources and formulate the relevant proposals.
- c) Transform into concrete orders the guidelines for the objectives to be achieved, received from the mayor or the office to which he delegates.
- d) Inform the mayor, or the position to which he delegates, of the operation of the service.
- e) Fulfill any other function attributed to him by the body's municipal regulations."

For these purposes, article 8 of the Regulation of the local police of the municipality establishes:

"The superior command of the Local Police (...) is exercised by the mayor, and/or by his delegate, in accordance with the provisions of current legislation.

The immediate command of the Local Police (...) corresponds to the head of the body, who will be the person designated by the mayor, in accordance with the legal provisions on this subject, in accordance with the command capacity and suitability for the position of work

In the event of the absence of the head of the body, or any other circumstance that prevents him from carrying out his duties, these will be automatically assumed by the police officer of higher graduation, who, for the same reasons and/or circumstances, will replace him the other corps commands in strict descending order of category and seniority.

If the absence lasts more than a month, the mayor, or his delegate, can designate the one he considers most suitable for this function, according to the principles of capacity and merit, among the members of the highest graduation of the corps. "

In short, the current legal framework attributes to the mayor's office the superior management of the municipal police. In exercising this function of management and supervision, the mayor's office is authorized to access the daily news reports of the municipal police.

As for the mayor's lieutenants, in accordance with article 53.2 TRLMRLC, their appointment corresponds to the mayor's office and, with respect to their functions, article 55 of the same legal text establishes:

"The mayor or mayoress freely appoints and revokes the deputy mayors from among the members of the governing commission and, when there is none, from among the councilors. The deputy mayors replace the mayor or mayoress, by order of appointment, in cases of vacancy, absence or illness."

It follows from this regulation that it is up to the deputy mayors to replace the mayor or mayoress in cases where there is a vacancy, absence or illness of the person who prevents him or her from performing his or her duties. In these cases, a deputy mayor, the one who corresponds by order of appointment, will have to perform the functions attributed to the mayor during the period in which that circumstance occurs.

Likewise, in addition to the cases of replacement of the mayor's office, the mayor's lieutenants can perform functions by delegation of the mayor's office. Thus, article 56 of the TRLMRLC establishes:

56.1 The mayor or mayoress can delegate the exercise of his or her powers, except for those in article 53.3, to the members of the governing commission and, when there is none, to the deputy mayors.

56.2 The delegation agreement must determine the matters that it covers, the powers that are delegated and the specific conditions for their exercise.

56.3 The mayor may also confer special delegations for specific tasks, in favor of any councilor, even if he does not belong to the government commission."

The attributions that cannot be delegated to the government commission or the deputy mayors are those provided for in article 53.3 TRLMRLC, which establishes the following:

53.3 The mayor or mayoress can delegate the exercise of his or her powers, except for those of convening and presiding over plenary and government committee sessions, deciding ties with the quality vote, arranging credit operations, the senior management of all staff, the separation of the service of civil servants and the dismissal of labor personnel, and those mentioned in letters b), f), s), k), l) im) of section 1 .

Those provided for in letters b) f), s), k), l) im) of section 1 of article 53 of the TRLMRLC are:

"b) Direct the municipal government and administration. (...) f) Issue bans and ensure that they are complied with. (...) k) Exercise judicial and administrative actions and the defense of the city council in the matters of its competence and also when these have been delegated to another body, and, in case of urgency, in matters of the competence of the plenary. In the latter case, an account must be given to the plenary in the first session that it convenes for its ratification.

l) The initiative to propose to the plenary the declaration of harmfulness of the administrative acts in matters that are the competence of the mayor's office. Also, the mayor or mayoress can

to declare that it is injurious to the powers of the plenary, for reasons of urgency that make the convening unfeasible, and in the first meeting it has to give an account of it.

m) Adopt personally and under his responsibility, in the case of catastrophe or public misfortunes or serious danger thereof, the necessary and appropriate measures, and give an immediate account of them to the plenary. (...) s) The approvals of the development instruments of the general planning of the municipality not expressly attributed to the plenary session, and also the approval of the urban management instruments and complementary urbanization projects."

It must also be taken into account that, as established in article 56 TRLMRLC, the delegation agreement must determine the matters that it includes, the powers that are delegated and the specific conditions for their exercise.

For the purposes we are concerned with, the direction of the local police would be an attribution of the mayor's office that could be delegated to a deputy mayor.

Therefore, it follows from the regulations analyzed that the mayor's lieutenants can act in place of the mayor's office in cases of vacancy, absence or illness and can also perform functions that correspond to the mayor's office by delegation.

Regarding the information to which the deputy mayors can have access for the exercise of their functions, it must be taken into account that articles 77.1 of the LBRL and article 164.1 of the TRLMRLC regulate the right they have all members of the local corporation to obtain all the background, data or information that are in the possession of the services of the local corporation and necessary for the exercise of their functions is regulated.

Thus, article 77.1 of the LBRL establishes that "all members of local corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the services of the Corporation and are necessary for the development of their function".

In this same sense, article 164.1 of the TRLMRLC provides that "all members of local corporations have the right to obtain (...) all the antecedents, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."

This information must be provided directly to the members of the corporation when the circumstances listed in the second section of article 164.2 of the TRLMRLC occur, which establishes:

"[...]

2. Corporation services must provide information directly to corporation members when:

a) Exercise delegated functions and the information refers to matters of their own responsibility.

b) These are matters included in the agenda of the sessions of the collegiate bodies of which they are members. c) It is about access to information or documentation of the local corporation that is freely accessible to citizens.”

From the regulations analyzed, it follows that, both in the case of acting in place of the mayor's office and in the case of the delegation of functions, the mayor's lieutenants must be able to access the information necessary for the exercise of the entrusted functions. To the extent that these functions are performed by substituting or delegating the mayor's office, the mayor's deputies will be able to access the same information as the mayor.

From the point of view of data protection regulations, articles 55, 56 and 164 of the TRLMRLC in relation to article 6.1.e) of the RGPD would constitute a legitimate basis for the processing of the data necessary for the exercise of the functions that correspond to the deputy mayor in substitution or delegation of functions of the mayor's office.

Thus, with respect to the functions related to the direction of the local police carried out by a deputy mayor, either in place of the mayor or as a result of a delegation of functions, access to the full content of the daily news releases from the local police could be considered lawful treatment.

Likewise, it cannot be ruled out that in the case of delegations of functions that affect other sectoral areas other than the local police, access to some information contained in the daily announcements could be justified to the extent that it is information necessary for the development of entrusted functions (for example in the case of delegation of functions relating to traffic or social services it may be necessary to access certain information contained in police reports). The principle of data minimization (article 5.1.c) RGPD determines that data must be adequate, relevant and limited to what is necessary in relation to the purpose for which they are processed. For this reason, in the event that the delegation refers only to some specific area other than that of exercising the functions of Chief of the local police, a full communication of the daily news would not be justified, but only the communication of the information contained in the daily news that is necessary to carry out the specific functions delegated to him.

Conclusions

From the point of view of the regulations for the protection of personal data, the deputy mayors can receive daily news from the local police when they act in place of the mayor's office, in case of vacancy, absence or illness, or if they have been assigned a delegation of functions that requires access to this information.

Barcelona, November 17, 2021