

CNS 52/2021

**Opinion in relation to the query made by a Department regarding the request for access made by a citizen to information related to the operation and installation of recreational machines**

**A query from the Data Protection Delegate of a Department regarding the request for access made by a citizen to information related to the operation and installation of recreational machines is presented to the Catalan Data Protection Authority .**

**In particular, according to the information transmitted with the consultation, the citizen requests a list that incorporates all the data relating to the operation and installation of type B machines, or recreational machines with a prize in the hospitality premises.**

**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 data protection delegate of a Department directs a query to this Authority in relation to the request for access to public information made by a citizen, who requests a list with all the information related to the exploitation and installation of recreational machines of type B, or recreational machines with a prize in hospitality premises.**

**The Department explains that the requested information can be transmitted in a spreadsheet, but it refers to the fact that it contains a large volume of data that affects a large number of third parties who can be both legal and physical persons (operating companies, manufacturers of recreational and gambling machines and owners of hospitality establishments). The Department does not specify, however, what would be the approximate number of affected individuals.**

**In relation to the data that may be affected by the request, the Department refers to it according to the document in question. In particular, it refers to the following:**

- Installation authorization. The data that are affected are, among others, the “[...] name of the establishment, address of the establishment, postal code, municipality, type of establishment, territorial scope, name and surnames/Corporate name of the establishment, NIF (either DNI, NIE, ...), authorized machines (number of machines/type of machine).**

- **Location authorization.** The affected data are, among others, the "[...] authorization number; type of company; name or company name; NIF; [...] corporate name of the premises; NIF local holder; name or business name of the owner of the premises; locality; Address; type of machine; no. of registration in the Register of machine models; series and no. machine manufacturing; no. machine operating permit; machine model name
- **Operating permit.** Among other things, data relating to the "permit number of the machine" are affected; name and company name of the manufacturer of the machine; type of machine; [...] type of company that owns the machine; name or company name of the company that owns the machine; NIF [...]"

The Department is interested in being informed "[...] how to proceed in responding to the request made by the interested party and specifically, in relation to the following issues:

- "
- If all the information requested by the petitioner should be delivered. In this sense, it is requested if, with respect to the natural persons who own operating companies or hospitality establishments, it is necessary to exclude from the transfer any data which, being of a personal nature, is protected by Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights.
- If article 31 of Law 19/2014, of December 29, must be applied, as the request may affect the rights or interests of third parties (significantly commercial interests), in accordance with what is established in this law".

### III

Given the consultation in these terms, the analysis must start from the basis that, according to what is established in articles 2.1 and 4.1 of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relative to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/EC (General Data Protection Regulation), hereinafter RGPD, the data protection regulations apply to the treatments that are carried out on any information "on 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, 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 data of legal entities are excluded from this scope of protection, as specified by the RGPD itself, establishing in recital 14 that "The protection granted by this Regulation must apply to natural persons, regardless of their nationality or place of residence, in relation to the processing of your personal data.

This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details.

Consequently, there must be no inconvenience from the perspective of data protection regulations in providing the interested party with information related to the legal entities affected by their request.

And, in relation to the treatment, article 4.2) of the RGPD defines it as "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".

In accordance with the provisions of article 5.1.a), any processing of personal data must be lawful, loyal and transparent in relation to the interested party and, in this sense, the RGPD establishes the need to participate in some of the legal bases of article 6.1, among which section c) provides for the assumption that the treatment "is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment".

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

For its part, article 86 of the RGPD provides that "the personal data of official documents in the possession of any public authority or public body or a private entity for the performance of a mission in the public interest may be communicated by said authority, organism or entity in accordance with the Law of the Union or of the Member States that applies to them in order to reconcile the public's access to official documents with the right to the protection of personal data under this Regulation".

The regulation and guarantee of public access to official documents held by public authorities or public bodies is regulated in our legal system in Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), which recognizes people's right of access to public information, understood as such "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law" (article 2.b) and 18 LTC). State Law 19/2013, of December 9, on transparency, access to public information and good governance (hereafter, LT), is pronounced in similar terms, in its articles 12 (right of access to public information) and 13 (public information).

In the case in which we are concerned that access to information related to the authorizations and permits granted in relation to the operation and installation of recreational machines in hospitality establishments or premises is requested, this information must be considered public for the purposes of article 2.b) of the LTC and subject to the right of access (article 18 of the LTC), being documentation in his possession as a result of his activity. It must be noted, however, that this right of access is not absolute and can be denied or restricted for the reasons expressly established in the laws, as is the case with the limits of articles 23 and 24 of the LTC.

#### IV

According to the information sent with the query, the purpose of the access request is to obtain information relating to all the data that refer to the operation and installation of type B machines, or recreational facilities with a prize in hospitality premises, making express reference to the information that includes the authorizations for the installation and location of the recreational machines in use, as well as the operating permits.

The Department explains to the consultation that the requested access affects numerous data, among which, among others, there is data relating to physical persons who are owners of operating companies or hospitality establishments, which is why it raises the consultation if it is necessary to provide all the information requested by the petitioner, or if, on the contrary, it is necessary to exclude some personal data from the communication.

It is cautioned that the Department does not extend its inquiry to the data of natural persons who, where applicable, are the manufacturers of the recreational machines or are their owners, in case it does not match the operator. Based on the information available, it is not possible to determine the reason for this exclusion - such as, that in these cases, access does not affect personal information -, but to the extent that it cannot be ruled out this possibility the analysis will also include access to this information when it affects personal data in accordance with the RGPD.

For the purposes that interest us in this opinion, the personal data that can be included in the requested information are the identifiers of the owners of the premises, operator, manufacturer, owner of the machine... (name and surname, and NIF), of location of the establishments or premises of hospitality and authorized and installed machines.

Given the personal information affected by the request, from the outset it is necessary to discard from the access analysis the applicability of the limit provided for in article 23 of the LTC, by which requests must be denied requests when the information to be obtained contains specially protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request.

Thus, the analysis of the access sought by the citizen must be carried out from the perspective of article 24 of the LTC, whereby:

"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights.

2. If it is other information that contains personal data not included in article 23, access to the information can be given, with the previous reasoned weighting of the public interest in the disclosure and the rights of the people affected. To carry out this weighting, the following circumstances must be taken into account, among others:

- a) The elapsed time.
- b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.
- c) The fact that it is data relating to minors.
- d) The fact that it may affect the safety of people.

3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the data protection legislation staff".

This article establishes the need to make a reasoned weighting between the public interest in the disclosure and the rights of the people affected, taking into consideration, among others, the time that has passed, the purpose of the access, the guarantees that are offered, if there are minors affected or the fact that the intended access could affect the safety of people.

For this purpose, it is necessary to take into account the provisions of Decree 23/2005, of February 22, which approves the Regulation of recreational and gambling machines, which aims to regulate the game developed through recreational machines and of chance, or automatic devices that, in exchange for a certain price, offer the user only a time of use for the sole purpose of entertainment or the obtaining of a prize, the regulation of the same recreational machines and random, of the activities related to these and of the people or companies and establishments dedicated to carrying out these activities (art. 1.1), and which foresees that the activities, companies and establishments related to the manufacture, marketing or distribution, installation and operation of recreational and gambling machines will require the prior obtaining of the authorizations provided for in this regulation (art. 1.2).

In accordance with article 3 and 4.2 of Decree 23/2005, this regulation applies, among others, to machines of type B, or recreational machines with a prize, understanding as such those that, in exchange for the price of the game offers the user a time of use and, eventually, in accordance with the game program, a cash prize. It is about this type of machine on which access is requested in the query raised.

It is appropriate to refer to the provisions of article 43 of Decree 23/2005. According to this article:

"43.1 At any time, the following must be found in the premises where the machines are in operation:

- a) Installation authorization for bars, restaurant bars, music bar, dance hall, party hall with show and public place where prostitution is practiced and operating authorization in the case of lounges or bingo, which must be located in a visible and accessible place on the premises. b) Location authorization. [...]"

And, in relation to the documentation that the machine must incorporate, in article 44 of Decree 23/2005 which provides the following:

**"44.1 All the machines referred to in this Regulation that are installed must have incorporated and visible from the outside: a) The factory marks. b) The operating permit, duly protected from deterioration. c) The communication of location presented to the corresponding territorial service of the Game and Shows. [...]"**

**44.2 All installed machines must incorporate an indicator or plate affixed to the front part containing the data of the operating company that operates it, registration number in the Register, registered office and telephone number. "**

**In accordance with these provisions, the information that must be displayed, on the one hand, on type B recreational machines, are the operating permit and the location communication, and on the other hand, the authorization of 'installation of the machine must be in the premises so that it is in a visible and accessible place.**

**The fact that these documents must be displayed and therefore directly accessible to the public may be relevant in the case at hand in terms of their content.**

**Article 22 of Decree 23/2005, in relation to the exploitation permit, provides for the following:**

**"22.1[...] It must accompany the machine in all its transfers and installations and collect the data specified in the following sections, as well as those relating to changes of ownership, renovations by carrying out of technical inspections and finally the decommissioning of the machine.**

**[...]"**

**22.3 The certificate of the manufacturer, the importer or the person responsible for the model must include: a) Name or company name of the manufacturer or importer, tax identification number and registration number in the Registry of companies b) Type and name of the model of the machine, registration number in the Register of models and series and manufacturing number. c) Technical characteristics of the machine, with a description of the profit plan. d) Date of manufacture of the machine. e) Model, series and number of the meters it incorporates.**

**22.4 Once the documentation presented has been verified, the corresponding territorial Game and Shows service issues the operating permit which will include, in addition to those included in letters a), b), d) and e) of the previous section, the following data: a) Operating number of the machine. b) Period of validity of the permit. c) Details of the applicant operating company. [...]"**

**In relation to the authorization of the installation, the regulations do not expressly provide what the content of this document will be, but based on what is provided for in article 27 of Decree 23/2005 in rela**

with the content of the application for the installation of machines and what the Department presents in its consultation, it can be deduced that it will probably contain, at least and among others, the identification of the owner of the establishment, if you are a natural person, or the company name, if you are a legal person, the identification number (DNI, NIF... according to each case), the location data of the establishment and the number of machines authorized to be installed ho

Regarding the location authorization, the regulations do not foresee the need to display it, but it only has to be in the premises where the machines are operated. However, the location communication will have to be exposed. And article 37.3 of Decree 23/2005 states that this communication will contain: "the identification data of the company that owns the machine, that of the machine itself, that of the establishment and that of the owner and the number of location authorization, and must be signed by the operating company."

In other words, the relevant authorization data will also be included in this communication that must be displayed.

Thus, on the basis of what has been presented, in favor of the public interest in disclosure - in accordance with the terms of article 24.2 of the LTC - it must be taken into account that the information contained in this information it is subject to the advertising regime of the regulations governing recreational and gambling machines (Decree 23/2005) and, consequently, it is of direct access to any person who accesses the premises or establishments where the machines are operated

On the other hand, in order to carry out the weighting, it is also necessary to have the purpose of the access. In the case at hand, according to the information transmitted by the Department, it does not appear that the claimant has expressly stated the purpose of knowing this information, although the Department refers to the fact that there may be commercial interests.

Without prejudice to this, from the perspective of the purpose of the transparency regulations, that is to say, the possibility of offering citizens tools to control the actions of public authorities, access to data relating to the operation and installation of type B machines, or recreational machines with a prize in the hospitality premises, may allow the citizen to verify or control the activity of the General Directorate of Gaming and Entertainment, or the service territorial of the Games and Shows that corresponds, with regard to its competence relative to granting the necessary authorizations to manage and exploit the games and bets (art. 6.1 of Law 15/1984, of March 20, of game) or, in general, have knowledge about the implementation of this type of machine.

However, it should be borne in mind that access to this information may also allow to control or have information relating to other circumstances that are not related to the control of the actions of the public authorities, in particular, to know personal data of natural persons who may be affected by the information requested and the interference this entails in their rights and freedoms.

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On the basis of this circumstance, we will refer to the first of the questions raised by the consultation:

"If we should proceed to deliver all the information requested by the petitioner. In this sense, it is requested if, with respect to the natural persons who own operating companies or hospitality establishments, it is necessary to exclude from the transfer any data which, being of a personal nature, is protected by Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights."

In accordance with what has been analyzed, the regulations governing recreational and gambling machines (Decree 23/2005) establish the need for certain documents to be displayed in the premises where the machine is operated, in particular, the operating permit, installation authorization and location communication. And, consequently, the information contained in these documents can be accessed directly by anyone who accesses each of the establishments or premises. This would be a relevant element in favor of access to the requested information contained in the operating permits, installation authorizations and site communications.

The Department states in its consultation that the intended access affects a large number of third parties, breaking them down between operating companies, manufacturers of recreational and gambling machines, and owners of hospitality establishments. It does not seem, however, that this can refer to operating or manufacturing companies that are natural persons, but only to natural persons who own hospitality establishments.

Access to the identification data of natural persons who are operators or manufacturers of recreational and gambling machines, by themselves, does not seem to give rise to a significant interference in the rights and freedoms of the persons affected, insofar as the data affects them in their capacity as individual entrepreneurs. In principle, it would mainly affect their professional or business sphere, although knowing this information can also have harmful effects in other personal spheres of these people, such as offering certain information that allows speculation about what the volume of business of the company.

However, it is considered that on the basis of the purpose of transparency, it would not seem justified to give access to the full DNI number or equivalent identification document number that may be included in the requested information.

Therefore, taking into account the exhibition that must already be carried out of the exploitation permit, and the consequences that can be derived for the people affected, it does not seem that the right to data protection should prevail on the right to obtain the requested information that affects them and that is included in the operating permits and location authorizations, with the nuance mentioned with respect to no. of ID

However, with regard to the information contained in the installation authorization and location authorizations which refers to the owners of the establishments or premises, despite the fact that they must also be the subject of dissemination in the machine or in the premises (in the case of the site, the document relating to communications), the assessment must be different.

Apart from the fact that in this case, with regard to the natural persons who own hospitality establishments, the number of people affected may be significant, it must be taken into account that, in relation to the installation authorization or the communication of 'location in the same premises or hospitality establishment, offering the information in a list with all the information relating to the operations and installations of type B machines has a clearly higher level of in



to its exhibition in the same premises. And this because in this case the personal data that may be affected are not only of an identifying nature of the owners of the hospitality establishments and premises, but also include those relating to the location of the establishments or premises, as well as the authorized machines and installed. And this even if the location data were deleted from the listing. Because once the establishment is known, it can be relatively easy to relate them to its location.

It should be borne in mind that, in this case, have this information contained in the installation authorizations, in addition to the obvious disclosure of your identity and DNI, or equivalent identification document number, and the fact to know, even approximately, the income that can be obtained from the recreational machines installed, your personal safety or the facilities of the premises or establishments they manage may be affected, since it would allow to easily establish which are the establishments with recreational or chance machines with their location and the number of machines. Having this information would make it possible to map which establishments or premises have machines - including how many machines each premises has - which may end up affecting the security of the premises themselves.

These circumstances are also appreciable with respect to the data of the owners of the establishments or hospitality premises contained in the location authorizations, to the extent that from this information it is possible to know the number of recreational machines with which each premises has, so that the security of the premises itself can also be affected.

Thus, from the point of view of data protection, and in particular the principle of minimization (art. 5.1.c of the RGPD), by which the data processed must be adequate, relevant and limited to what is necessary in relation for the purposes for which they are treated, and from the perspective of the purpose of transparency, it is necessary to avoid giving access to information that identifies or can make identifiable the owners of the premises or hospitality establishments.

In short, given everything that has been presented, and in response to the query regarding whether all the requested information must be provided, it is considered that given the negative effects on the rights and freedoms of the owners of the premises or establishments of hospitality that could disseminate the data that allows the location of the premises, the right to data protection must prevail over the public interest of the information requested.

For this reason, it would be necessary to anonymize or aggregate the information related to the hospitality establishments, so that it is not possible to identify or locate them, and also limit access to the data related to the complete ID number or number of equivalent identification document for the rest of those affected - operators and manufacturers -.

In accordance with the provisions of Opinion 05/2014 on anonymization techniques of the Data Protection Working Group of article 29, aggregation is an anonymization technique that must prevent "[...] that an interested party is singled out when it is grouped together with, at least, a number  $k$  of people. To achieve this, the values of the attributes are generalized to the point that all people end up sharing the same value. For example, by reducing the granularity of a place (city or region), many interested parties will share those values [...]".

That is to say, it would be necessary to provide the information relating to the owners of the hospitality establishments or premises anonymized or with a level of generalization that does not allow their identification. Thus

The Department must assess the risk and the possibility of subsequent re-identification of the holders in relation to the level of aggregation necessary to apply, so that the information sent reaches the necessary generalization to avoid the risk, even if it is remote, of re-identification, such as, for example, grouping information by municipality, or districts in the case of large populations, if applicable.

## VI

In relation to the second question raised, relating to:

"If article 31 of Law 19/2014, of December 29, should be applied, as the request may affect the rights or interests of third parties (significantly commercial interests), in accordance with what establishes this law ".

It should be noted that article 31 of the LTC provides for the following:

"1. If the request for public information may affect the rights or interests of third parties, in accordance with the provisions of this law, in the event that the potential affected are identified or are easily identifiable, they must be transferred from the request, and they have a period of ten days to present allegations if these may be decisive for the meaning of the resolution.

2. The claims procedure referred to in section 1 suspends the deadline for resolution.

3. The transfer of the request must indicate the reasons for the request, if they have been expressed, but it is not mandatory to reveal the identity of the applicant.

4. The applicant must be informed of the transfer of the application to third parties and of the suspension of the deadline for issuing a resolution until the allegations have been received or the deadline for presenting them."

In relation to this provision, article 62 of the RLTC provides the following:

"1. The information unit must transfer the access request to the third parties who may be affected by the access to the requested public information.

2. [...] it is understood that the request is transferred by notifying the affected third parties of a communication that must indicate the object and reasons for the access request , if they have been recorded, and must grant a period of ten working days so that third parties can have a look at the file relating to the access request and formulate in writing the allegations they consider. This procedure suspends the deadline to resolve.

3. It is understood that the third parties eventually affected are identified or easily identifiable when the information unit knows their identity and has or can have a channel or way of contact, including an email address.

4. The communication must not include the identity of the person requesting, unless, exceptionally, the public administration considers in a motivated way, and after consultation with the person requesting, that

sending the request with your identity may be essential for the defense of rights and interests owned by affected third parties.

For the purposes of carrying out the prior consultation with the applicant, the information unit must inform him, by means of communication, of the intention to transfer the application to affected third parties, and grant him a term of no less than five working days so that he can justifiably object to the disclosure of his identity to the third parties affected.

In the event that the applicant in the prior consultation objects to the disclosure of his identity, and the public administration does not consider it sufficiently justified for the purpose of defending the rights and interests owned by affected third parties, the The public administration must decide after considering the impact of third parties and the opposition of the applicant.

5. In cases where the individual notification to a large number of third parties becomes disproportionate in relation to the material and human resources available in each case, the individual notification may be replaced by a notification to the representatives of the collectives , sectors or areas affected, if applicable.

6. The information unit must inform the person or persons requesting, by means of communication, both of the transfer of the request to affected third parties and of the suspension of the deadline to resolve until they have received the legations or the period of ten working days granted for this purpose has passed.

7. For the purposes of article 31.1 of Law 19/2014, of December 29, the body competent to resolve must only take into account the allegations made that can assert data or decisive elements to weigh the rights and interests of third parties possibly affected by the access request".

In response to the query raised, and taking into consideration that the request made by the citizen may affect the rights or interests of third parties in accordance with what has been analyzed in the previous legal basis, article 31 of the LTC and article 62 of the RLTC are applicable.

However, it should be borne in mind that given the conclusion reached in the previous legal basis in relation to the need to aggregate or anonymize information relating to the owners of premises and hospitality establishments (derived from authorizations installation and location authorizations), to the extent that the application of this mechanism would lead to the anonymization of the information provided that it is carried out in accordance with the requirements to which reference has been made, not their rights and interests would be affected in the terms referred to in article 31 of the LTC of the owners of premises and establishments, a fact for which from the perspective of the protection of personal data it would not be necessary to carry out

And, in relation to the rest of the third parties affected (operators and manufacturers of recreational and gambling machines), it is worth saying that the number of affected individuals who are natural persons will probably not be very high nor, on the other hand, does it seem to have of being excessively complicated for the Department to be able to contact them to give them an audience in the terms provided for in the transparency regulations. Consequently, it would be necessary to give a hearing to those affected by the operating permits and the location authorizations

## **Conclusions**

**In accordance with the data protection regulations, the citizen would be legitimate to access the requested information as long as the information relating to the hospitality establishments of the installation authorizations, and location authorizations (and communication) is communicated in an aggregated or anonymized manner, so that their identification is not possible, and also to limit access to the data relating to the full ID number or equivalent identification document number of the rest of those affected - operators and manufacturers-.**

**It is not necessary to grant a hearing to the owners of the premises and hospitality establishments to the extent that the information is provided in such a way that their re-identification is not possible, but it should be granted to the rest of the affected third parties (operators and manufacturers of recreational and gamb**

**Barcelona, November 26, 2021**

Machine Translated