

CNS 58/2021

Opinion in relation to the query made by the data protection representative of a city council regarding access to a file of social services

Background

A query is presented to the Catalan Data Protection Authority by the data protection delegate of a city council regarding the data to be provided in response to a request for access to a Social Services file.

The data protection delegate explains that when faced with a request for access to a file of social services, the doubt arises as to whether what is provided for in article 70.4 of the LPAC, which establishes that it is not part of the administrative file "the information that has an auxiliary or supporting character, such as that contained in applications, files and computer databases, notes, drafts, opinions, summaries, communications and internal reports or between organs or administrative entities, as well as the judgments of value issued by the Public Administrations" and, therefore, they must not include the annotations and data of the Hestia, or they must apply what is established by the LTC which in its article 19 establishes that "The right of "access to public information includes any form or support in which this information has been prepared or in which it is preserved".

In this context, the DPD proposes: "if it were the second case, then the annotations and transcripts of interviews should be included, even if they are not technical reports as such, in the list of documentation contained in the file of Social Services? It should be noted that the application of elimination criteria associates them with the documentary evaluation tables, and this can be decisive when it comes to elimination, since if we consider them accessory annotations, they could be eliminated."

Finally, the inquiry focuses on determining whether "the access is on the file or on the data" which is based on the following questions: "in the case of an access to the data itself (via ARSOLP rights of the RGPD) as an access to the data by a third party (which could come via LTC), and without prejudice to the anonymization required in each case. It must be considered that the request for access in these cases is usually from a person in the family unit, being family records, and this implies access to data of other members, on which it is clear that the relevant anonymization is required. "

Having analyzed the query that is not accompanied by other documentation, in accordance with the report of the Legal Counsel I issue the following opinion:

Legal Foundations

I

(...)

II

The City Council's Data Protection Officer raises the question of the applicable regulations to determine the object of access to a request for access to a person's or family's social services file. These files, in accordance with the information provided in the consultation, are managed with the support of the Hestia application, in which the notes and observations of the technicians and following the results of the interviews with the affected people are collected.

As the data protection delegate explains in his letter, the determination of the information that forms part of the administrative files, from the point of view of the administrative procedure regulations, is delimited by article 70 of Law 39/ 2015, of October 1, of the common administrative procedure of public administrations, which establishes:

"1. The administrative file is understood to be the ordered set of documents and actions that serve as antecedent and foundation for the administrative resolution, as well as the steps aimed at executing it. (...)

4. Information that has an auxiliary or supporting character, such as that contained in applications, files and computer databases, notes, drafts, opinions, summaries, communications and internal reports or between administrative bodies or entities, will not form part of the administrative file. as well as the judgments of value issued by the Public Administrations, unless they are reports, mandatory and optional, requested before the administrative resolution that puts an end to the procedure."

It is not up to this Authority to pronounce on the information that must form part of the administrative files, since it is the competent public administration that determines, in accordance with the administrative and sectoral rules of procedure that are applicable, the documentation or information which must include, although it must be borne in mind that there are judicial pronouncements according to which a restrictive application of the provision of article 70.4 of the LPAC must be made, in the sense of limiting as much as possible the information that it is considered auxiliary or supportive (Order of the Administrative Disputes Chamber of the Supreme Court of April 20, 2017 in appeal number 458/2016).

However, the resolution of the question that is raised does not go through the determination of the content of the administrative file, but through the delimitation of the object of the right of access. And this both with respect to the right of access recognized in data protection legislation and the right of access recognized in public information transparency legislation.

III

For the determination of the information that is subject to the right of access of the interested parties provided for in article 15 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Protection of Data (hereafter, RGPD) will need to be in accordance with the regulations contained to that effect in this RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

In accordance with its articles 2 and 4.1, the RGPD is applicable to any treatment of 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, 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". (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, query, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction".

As stated in Recital 15 of the RGPD "In order to avoid a serious risk of circumvention, the protection of natural persons must be technologically neutral and must not depend on the techniques used. The protection of physical persons must apply to the automated treatment of personal data, as well as to its manual treatment, when the personal data appear in a file or are destined to be included in it."

In other words, the data protection regulations are applicable to any information that contains personal data relating to an identified or identifiable natural person, regardless of the technology used for its management, the support that contains this information and the treatment of which it is object

With regard to the rights that data protection regulations recognize for interested parties, article 12 of the RGPD establishes:

"1. The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible form and easily accessible, with a clear and simple language, in particular any information directed specifically at a child. The information will be provided in writing or by other means, including, if applicable, by electronic means. When requested by the interested party, the information it can be provided verbally as long as the identity of the interested party is demonstrated by other means.

2. The person responsible for the treatment will facilitate the exercise of their rights by virtue of articles 15 to 22. In the cases referred to in article 11, section 2, the person in charge will not refuse to act at the request of the interested party with the in order to exercise his rights under articles 15 to 22, unless he can demonstrate that he is not in a position to identify the interested party.

3. The person responsible for the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of requests.

The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

(...)

Specifically, article 15 of the RGPD regulates the right of access of interested parties in the following terms:

"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."

In this regard, Recital 63 of the RGPD specifies:

"Those interested must have the right to access the collected personal data that concern them and to exercise said right easily and at reasonable intervals, in order to know and verify the legality of the treatment. This includes the right of those interested to access health-related data, for example the data of their clinical histories that contain information such as diagnoses, test results, evaluations by doctors and any treatments or interventions performed. All interested parties must, therefore, have the right to know and be informed, in particular, of the purposes for which personal data is processed, its processing period, its recipients, the logic implicit in all automatic processing of personal data and, at least when it is based on profiling, the consequences of said treatment. If possible, the person responsible for the treatment must be empowered to facilitate remote access to a secure system that offers the interested party direct access to their personal data. This right must not adversely affect the rights and freedoms of third parties, including trade secrets or intellectual property and, in particular, intellectual property rights that protect computer programs. However, these considerations should not result in the refusal to provide all the information to the interested party. If it deals with a large amount of information relating to the interested party, the data controller must be authorized to request that, before the information is provided, the interested party specifies the information or processing activities to which the request refers."

Therefore, in accordance with the data protection regulations, any interested party can exercise the right referred to in article 15 of the RGPD so that the person in charge of the treatment informs them whether their data is being processed personal data and, if affirmative, of the data being processed, as well as the rest of the information specified in this article (the purposes, the categories of data, the recipients to whom they will be communicated, the expected retention period of the data, the rights relating to the protection of your data that you can exercise, when appropriate the information about the origin of the data, about the existence of automated decisions and the guarantees in case of international transfers).

This is a very broad right to the extent that the concepts of personal data and treatment are also very broad, so that in general a right of access to all the data that the person in charge is dealing with is recognized an interested party regardless of the means, formats and supports in which they are treated with the limitations that may derive from the existence of rights of third parties (art. 15.4 of the RGPD) and, eventually from the exceptions that may derive- se of rules with the rank of law in accordance with article 23 RGPD.

In addition, this right covers the possibility of obtaining a copy of the personal data subject to treatment (Article 15.3 RGPD).

In accordance with what has been explained, with regard to social services records, the right of access of an interested party to his personal data will entail the obligation of the city council to inform him about whether your data is being processed and to provide you, in addition, the rest of the information referred to in article 15.1 of the RGPD and, where appropriate, a copy of the personal data that is being processed, regardless of the support and format of this information, respecting the rights and freedoms of third parties.

The query refers expressly to the observations and comments of the professionals or the results of the interviews that may have been collected in the Hestia application, and to the doubt as to w

this information must be included in that which must be provided to the interested party. With regard to this matter, it must be taken into account that, to the extent that the observations and comments refer to an identified or identifiable natural person, they are considered personal data of the interested party.

In order to determine whether this information can be accessed by the interested party, it is necessary to take into account, in addition to the data of third parties that may be included, what is established by the specific regulations for that purpose.

It is interesting at this point to distinguish between the observations and comments of the professionals included in the file, from the information that may be included as a result of interviews with third parties who have been able to provide information about the person concerned.

With regard to the observations and comments of professionals, article 10 of Law 12/2007, of 11 October, on social services, provides that "in the field of social services all people have the right to claim and to receive truthful information about the services" and, in particular, letter b) provides for the right to:

"d) Access their individual files, in everything that does not violate the right to privacy of third parties, and obtain copies, in accordance with what is established by law. ~~This right does not include, however, access to the annotations that professional staff have made in the file.~~

Obviously not every annotation can be included in this exception. A broad interpretation of this concept would lead to leaving the right of access empty of content. For this reason, only those annotations can be considered included, the disclosure of which could end up harming the objective of the service provided and, ultimately, the interest of the affected person. For these purposes, whenever possible, the opinion of the professionals who made the notes must be taken into account in order to make this assessment.

Therefore, to the extent that the sectoral regulations provide for a restriction on access to the notes of the professional staff contained in the files, it will be necessary to limit access to this information regardless of the format in which it is contained.

With regard to the information of third parties that may be contained in the files to which it refers, it must be taken into account, at the outset, that article 15.4 RGPD itself establishes that "The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others.". And in this same sense, mention that article 10.d) of Law 12/2007 recognizes the right of users of social services to "access their individual files, in all that does not violate the right to privacy of third parties, and obtain copies thereof, in accordance with what is established by law.".

Therefore, if the information of third parties contained in the file includes data that refers to the privacy of third parties, it will be necessary to limit their access. This is without prejudice to being able to apply, where appropriate, other limitations, in accordance with articles 15.4 and 23 of the RGPD to which reference has been made.

Faced with a request for access to a file that contains data not only of the interested party himself but of third parties, who in many cases may be part of the same family unit,

in each case, a balance must be made between the right of the interested party to access this information and the right of third parties to the protection of their personal data.

Apart from this, it should be borne in mind that article 15.1.g) of the RGPD includes within the right of access the right to know any available information about the origin of the data that affects it. This could include the identification of the person who provided the information being processed,

All of this, unless there is some element that, depending on the personal situation of these people, should lead to a limitation of this access. This would be the case, for example, of what is provided for in article 100.2 of Law 14/2010, of May 27, on rights and opportunities in childhood and adolescence, according to which the Administration must guarantee confidentiality of the identity of the person who carries out the communication of a situation of risk or helplessness in which a child or adolescent finds himself. It would also be the case, for example, of situations of gender violence or others in which revealing the source of the information could cause harm to these people.

The consultation highlights that "the request for access in these cases is usually from a person in the family unit, as they are family files, and this implies access to data of other members".

This Authority has previously had the opportunity to analyze the access to information contained in a social services file by one of the members of a family unit in opinion CNS 44/2021 which can be consulted on the website of the APDCTA www.apdcat.cat.

Specifically, as analyzed in the aforementioned opinion, certain information of third parties members of the same family unit may be subject to access. Thus, in relation to the information relating to non-emancipated minor children, the parent, as long as he is not deprived of parental authority, to the extent that he exercises the legal representation of his minor children must be able to exercise the rights of informative self-determination in the name and representation of children under fourteen years of age and, consequently, access to social services files with regard to their information. Also, (with nuances in cases where the social services consider that there is a conflict between the parents and the minor himself), the parent will also be able to access the information that contains data of his children under age but over fourteen years.

IV

Regarding the right of access regulated in the transparency legislation, this legislation, based on the definition of what must be understood by public information, makes it clear that the right of access to public information includes any form or support in that this information has been processed or stored. Thus, Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), defines public information as "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 other obliged subjects" (article 2.b LTC) and provides that "The right of access to public information includes any form or support in which this information has been prepared or in which it is preserved". (article 19.1 LTC). In the same sense, article 13 of Law 19/2013, of December

and good government establishes that "public information is understood as the contents or documents, regardless of their format or support, that are in the possession of any of the subjects included in the scope of application of this title and that have been prepared or acquired in the exercise of their functions."

It should also be noted that article 29.a) of LTC establishes as one of the reasons for inadmissibility of requests for access to public information that the request is regarding "notes, drafts, summaries, opinions or any internal working document without relevance or public interest". Likewise, article 18.b) of LT establishes this reason for inadmissibility of requests when these come "Referring to information that has an auxiliary or support character such as that contained in notes, drafts, opinions, summaries, communications and internal reports or between bodies or administrative entities".

In any case, it is not up to this Authority to determine which documentation must include the information included in the right of access to public information, without prejudice to remembering that the application of the reason for the rejection of requests in article 29.a) LTC, as well as the other causes of non-admission and the limits on access to access to information, as established by the transparency law itself and the criteria of the Guarantee Commission of the Right of Access to Public Information (GAIP) must be applied restrictively and with a

In any case, and as far as this Authority is concerned, it is necessary to clarify that regardless of whether the personal information is part of a file or not, insofar as it is personal information in the terms that have already been pointed out above), the limits provided for in articles 23 and 24 of the LTC would apply.

Conclusions

The personal data protection regulations and, consequently, the limits provided for in articles 23 and 24 of the LTC are applicable to any personal data held by the City Council, regardless of whether it is part of an administrative file or not.

The right of access recognized in the data protection regulations includes the right to be informed about whether your personal data is being processed and, if so, to receive information on the aspects referred to in article 15 of the RGPD (the purposes, the categories of data, the recipients to whom they will be communicated, the expected period of data conservation, the rights relating to the protection of your data that you can exercise, when the information about the 'origin of the data, on the existence of automated decisions and guarantees in case of international transfers) and, if applicable, the right to obtain a copy.

From this information, it is necessary to omit the annotations that the professional staff have made in the file, the disclosure of which could be harmful to the attention of the person using the service or those other data that could negatively affect the rights and freedoms of 'others, or any of the limits established based on what is established in article 23 RGPD.

Barcelona, January 12, 2022