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Opinion in relation to the inquiry made by the legal representative of a local commercial company regarding the legitimacy to request from the banking entities identification data of the people who, without being holders (deceased holders), pay the public fees associated with funeral rights of deceased persons

A query is presented to the Catalan Data Protection Authority by the legal representative of a local commercial company in which he explains that in the management of the public service of the municipal cemetery he is faced with a circumstance that prevents the correct functioning of the tasks that has entrusted

In particular, it states that when the holder of funeral rights dies, without passing them on or leaving any indication of their transfer, the graves and niches are left without a holder. However, in many cases there is a person who takes charge of the associated conservation fees because the payment is recorded, but whose identity is unknown, given that they are old direct debits, prior to the entry into force of the SEPA regulation.

The municipal society declares that this circumstance does not allow compliance with the regulatory provisions that regulate this public service, or alters the normal operation of the service, as well as harms the people who pay the fees associated with these funeral rights to the extent that the regulations provide that in these cases limitations must be imposed, such as the non-authorization of the transfer of remains or the non-granting of provisional rents.

With the aim of remedying this situation, the company proposes the possibility of turning to the banking entities that manage the payment of these fees in order to obtain the identification data of the holders of the bank accounts that satisfy them and to be able to inform them of the possibility to regularize their situation, and guarantee the correct exercise of their rights.

In relation to this issue, it raises the following questions:

"A) We can consider that XXXX is acting in a mission carried out in the public interest or in the exercise of public powers and that it is therefore legitimate, from the perspective of the legislation on the protection of personal data, to request the corresponding banking entities that provide them with the essential contact details (name and telephone number or e-mail) of those customers who, without being registered as holders (but being interested) of the burial rights of niches and graves located in cemeteries managed by XXXX meet the conservation fees that are associated with them, with the sole purpose of making it possible to contact them to inform them about their situation, the possibility of regularizing it and the consequences of not doing so?

B) Otherwise, is any other legal basis, other than the consent of the interested party, considered applicable to legitimize the indicated data processing?"

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

Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and by which repeals Directive 95/46/CE (General Data Protection Regulation), hereinafter RGPD, provides that its provisions are applicable 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" (arts.* 2.1 and 4.1).

On the other hand, 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 treatment of the identification data of the holders of the bank accounts from which the payment of the fees associated with the funeral rights is managed, with the purpose of making it possible to contact them to inform them about aspects related to the ownership of the funeral rights, the the possibility of regularizing them and the consequences of not doing so is subject to the principles and guarantees of the personal data protection regulations (RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (from now on, LOPDGDD)).

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 legitimation of data processing that is based on the need for any of the legal bases established in its article 6.1, among which section e) foresees the assumption that the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of powers public given to the person in charge of the treatment.

As can be seen from article 6.3 of the RGPD and expressly included in article 8.2 of 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 this legal basis of article 6.1.e) of the RGPD when so established by a rule with the rank of law.

It is therefore appropriate to analyze the regulatory framework applicable to the matter to determine whether there is a legal basis, specifically, based on article 6.1.e) of the RGPD.

Since the query refers to the processing of personal data in the management of the service of cemeteries, it is necessary to take into account the provisions of the local regime regulations, in particular, Law 7/1985, of April 2, Regulating the Bases of the Local Regime (hereinafter, LBRL), Legislative Decree 2/2003 , of April 28, which approves the revised text of the Municipal and Local Regime Law of Catalonia (hereinafter, TRLMRC), and all other specific and complementary provisions.

According to article 85.1 of the LBRL, local public services are those provided by local entities within the scope of their powers.

Article 25.2.k) of the LBRL establishes that municipalities exercise in any case their own powers, in the terms provided for by state and regional legislation, and among others, in matters of cemeteries and funeral activities. At the same time, with regard to this competence, article 26.1.a) of the LBRL provides that all municipalities, regardless of population level, must provide at least the cemetery service. Articles 66.3.j) and 67.a) of the TRLMRLC also contain similar terms.

The power to establish the management system of public services corresponds to the power of self-organization of the local entity (art. 4.1.a of the LBRL), which must manage them directly or indirectly, for example through the mode of direct management through a local trading company with fully public share capital (articles 85.2 of the LBRL and 249 of the TRLMRLC).

In the case at hand, the City Council has established a local trading company with wholly public share capital, which has as its corporate purpose the management, development and operation of incineration and municipal cemetery services, including others the management and operation of cemeteries, the granting and transmission of the concession of burial rights on graves and the rental of graves (art. 1 and 2 of the statutes).

Through the City Council's Cemeteries Ordinance, various issues related to the management of cemeteries are regulated, such as the transfer of burial rights, which is the subject of the consultation.

According to article 19.2 of the Ordinance on cemeteries (from now on, the ordinance) it is the responsibility of the City Council or management entity to whom it delegates, among others, the resolution of files on the ownership and use of funeral rights.

The funeral right on the use of niches, graves and ossuaries arises from the act of concession and the payment of the fee established in the corresponding Fiscal Ordinance (art. 19.1 of the ordinance), and remains guaranteed through its registration in the Cemetery Register Book, and in the general computer file of the Office of Cemeteries, and for the issuance of the nominative title of each grave (art. 22).

The Cemetery Register Book includes, among others, the general register of graves and plots, which must contain various information, such as the name, surname and address of the owner of the grave; first and last name and address of the beneficiary designated, if applicable, by the owner; and the successive transmissions by acts *inter vivos* or *mortis causa* (arts. 12 and 23.1 of the ordinance).

The legal regime for the granting of funeral rights is contained in article 37 et seq. of the ordinance. In the particular case, the analysis of article 41 of the ordinance is of interest, which provides for the following:

"1. Upon the death of the holder of the funeral right, the designated beneficiary, the testamentary heirs or those to whom it corresponds ab intestate will be obliged to transfer it in their own favor by appearing before the City Council or management entity to which they delegate with the supporting documents of the transmission [...]

"2. After a period of one year has passed since the death of the holder of the funeral right without having requested its transfer, the following limitations will be imposed:

a. No authorization to transfer remains.
b. No granting of provisional rents.
c. Burial may be authorized as long as the funeral right is transferred at the same time."

The local mercantile society explains to the consultation that there have been cases in which, in the death of the holder of the funeral right, the provisions of article 41.1 of the ordinance have not been complied with. This affects the normal operation of the public service because, as considered in the consultation itself, the file does not state who is the holder of the funeral right. In some cases, although it is known that there is a person who pays the fees associated with funeral rights, they are direct debits prior to the SEPA regulations, and they do not have their own tools to be able to identify them with the aim of regularizing the situation.

It is necessary to take into account the provisions of the Ordinance for patrimonial benefits of a non-taxable public nature for cemetery services (BOPB, February 5, 2021), from which they are established a series of financial consideration for non-tax public patrimonial benefits for the management, development and provision of cemeteries services, such as the conservation and cleaning of roads, sewerage network, gardening and cemetery buildings, or derivative acts of the ownership of the funeral right (art. 1 and 2). Those obliged to pay these compensations are the persons acquiring the funeral rights, the holders, holders or applicants, depending on whether it is the first acquisition or subsequent transmission of funeral rights, acts derived from the funeral right, or the provision of services (art. 3).

At the same time, it is also necessary to take into account the provisions of Regulation (EU) number 260/2012 of the European Parliament and of the Council of March 14, 2012, which establishes the technical and business requirements for transfers and direct debits in euros , in force since March 30, 2012.

Article 5.3.a) of Regulation 260/2012 provides that, in relation to direct debits, the following must be guaranteed:

"i) that the beneficiary provides the data specified in point 3, letter a), of the annex in the first domiciled debt and in an isolated domiciled debt, as well as in each successive domiciled debt,

ii) that the orderer gives his consent both to the beneficiary and to the payment service provider of the orderer (directly or indirectly through the beneficiary); that the orders, as well as any possible subsequent modification or cancellation, remain in the power of the beneficiary or a third party on his behalf, and that the payment service provider informs the beneficiary of this obligation in accordance with articles 41 and 42 of the Directive 2007/64/EC;"

Point 3.a of the annex to Regulation 260/2012 provides that, with regard to direct debits, the beneficiary must provide the name of the payer, if available, among other information.

In accordance with the provisions of article 6.2 of Regulation 260/2012, no later than February 1, 2014, direct debits had to be adjusted, among others, to the requirements we have just mentioned.

In summary, on the basis of what has been presented, all the cemeteries managed by the society municipal must manage a Register Book of the Cemetery in which, among other things, it must be stated the names and surnames and address of the owner of the graves. Upon the death of the holder of the funeral right without complying with the provisions of article 41 of the cemeteries ordinance, in the cases prior to the SEPA regulations, the society exposes that it does not have its own means to be able to identify the person who satisfies the fees associated with funeral rights through domiciled debts.

Faced with this circumstance, the society raises the possibility of turning to the banking entities of the people who pay the fees associated with the funeral rights with the purpose of having them communicate their names and telephone number or email, in order to be able to communicate with them, inform them about the situation and the negative effects of not regularizing it. In particular, it is necessary to see if this treatment would be covered by the legal basis of article 6.1.e) of the RGPD.

III

The legal basis of article 6.1.e) of the RGPD refers to cases in which the processing of personal data 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 in charge of the treatment.

According to recital 45 of the RGPD, the law of the Union or of the member states must determine whether the person responsible for the treatment that carries out a mission in the public interest or in the exercise of public powers must be a public authority or another natural or legal person under public law, or, when it is done in the public interest, under private law.

It should be noted that the GDPR does not provide a concept of authority or public body. However, the position of the Article 29 Working Group (from now on, WG29) in its document *"Directrices sobre los delegados de protección de datos (DPD)",* revised by last time and adopted on April 5, 2017, and in which the following is established:

"The RGPD does not define what constitutes a "public authority or organism". The Article 29 Working Group considers that this notion must be determined under national law. Therefore, public authorities and bodies include national, regional and local authorities, but in addition, the concept, according to the applicable national legislation, normally also includes a series of bodies governed by public law.[…]

Public work can be carried out, and public authority can be exercised, not only by public authorities and bodies but also by other natural or legal persons governed by public or private law, in sectors such as, according to the national legislation of each State member, public transport services, water and energy supply, road infrastructure, public broadcasting, public housing or the disciplinary bodies of regulated professions".

Thus, GT29 considers that it must be the internal order of each state that determines which subjects must enter the category of public authority. Obviously, when it comes to subjects who exercise public powers or powers, they must necessarily be included in this category.

In the internal regulation, we also do not find a definition of what is to be understood by "public authority". On the contrary, the entities that are considered public administration are clearly defined.

In accordance with article 2.3 of Law 40/2015, of October 1, on the legal regime of the public sector, they are considered public administration:

- The General Administration of the State.
- The administrations of the autonomous communities.
- The entities that make up the local administration.
- Any public body or entity under public law linked or dependent on public administrations.

Without prejudice to the fact that beyond the concept of public administration there may be other entities to which the status of public authority must be recognized, it seems obvious that all entities that have the consideration of public administration are should recognize the status of public authority for the purposes of the GDPR.

This is the case of the City Council, a local body, in terms of the powers that the local regime regulations attribute to it. But, nevertheless, in the particular case the person who makes the inquiry is the society. Local mercantile company with wholly public share capital, and which in principle does not have the consideration of public administration in accordance with the concept of public administration established by Law 40/2015.

However, according to the criteria of WG29, the concept of authority or public body must be understood in a broad sense, so that it also includes other physical or legal persons who are governed by public or private law in certain sectors, such as public transport or water and energy supply. From the point of view of what interests us in this opinion, these entities can be seen to include those that manage the local public service relating to cemeteries and funeral activities to the extent that they are in charge of the management of a public domain space and that entails the exercise of certain public powers.

Thus, on the basis of what has been presented, the City Council is empowered to process personal data in the field of cemetery management, when the purpose is the management of the public service itself in the terms set out in the regulations. And, in the event that the local entity has chosen to manage the public service based on the direct management modality, this conclusion would also be extended to

those cases in which, as in the case at hand, it is managed through a local mercantile company with wholly public capital.

In summary, the legal basis of article 6.1.e) of the RGPD can be applied to the company to process personal data in the scope of the municipal public service of cemeteries, with the specific purpose of managing them. And this, in accordance with the analyzed cemetery regulations, necessarily involves processing data of the holders of funeral rights, among other data.

The concurrence of the legal basis provided for in Article 6.1.e of the RGPD requires two additional conditions. On the one hand, the purpose of the data is the exercise of a mission and public interest or the exercise of public powers; on the other hand, that the treatment affects only the data necessary for this purpose.

Regarding the first question, we have already referred above to the public service nature of the activity entrusted to the municipal society. Therefore, we can conclude that we are facing a mission in the public interest. On the other hand, we have also referred to certain powers necessary for the management of this service and of the public domain. It seems clear, therefore, that the first of the requirements is met.

Regarding the second issue, it seems clear that the management of burial rights requires identifying the persons holding these rights, as is clear from the obligation provided for in article 41.1 of the Cemeteries Ordinance). And this to the extent that, as we have seen, given the powers that the regulations recognize in society in the matter of cemeteries, the fact that the identity of the holder is unknown may even lead to the limitation of the funeral right itself (article 41.2 of the cemetery ordinance).

On the other hand, and focusing on the fact that the information is to be requested from the banking entities that have made the payment, it must be taken into account that, in accordance with European regulations on transfers and debts domiciled in euros (Regulation 260/2012), with an application deadline of February 1, 2014, the identification of the person who directs a payment is necessary to the extent that, in accordance with this regulation, in order to direct the payment on beneficiary (in this case the municipal society) must have the consent of the orderer (who satisfies the fees associated with funeral rights) in terms of article 5.3.a.ii of Regulation 260/2012, or the documents relating to the modification or cancellation of this payment order.

In other words, the collection of debts can only be direct debited if, among other requirements, the company has the document from which the consent of the holder of the funeral right is recorded, modification (such as a change of owner) or subsequent cancellation, for which, regardless of the assumption, it is necessary for the company to know the identity of the owner that makes the transfer, so that the payment order can be effective.

This allows us to conclude that the identity of the person who ordered the payment is necessary data for the purposes of the exercise of the public function to which the payment is associated. Consequently, its communication to society by the banking entity would be enabled.

IV

Regarding the data relating to the telephone and email of the people who have made the payment, it is necessary to analyze, first of all, whether once the municipal society knows their identity, they can check in their files whether the owner is already listed as to the holder of another title of funeral right, for the purposes of being able to use the data already recorded there for the purposes of contacting them for the management of funeral rights whose updated holder is not yet recorded.

This requires an analysis, from the perspective of the principle of purpose (art. 5.1.b RGPD) according to which data can only be collected for specific, explicit and legitimate purposes and cannot be subsequently processed in a manner incompatible with these purposes . For the purposes of assessing this compatibility, it is necessary to take into account the provisions of article 6.4 of the RGPD:

"When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society for to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data was initially collected, will take into account, among other things:

a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided;
b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller;
c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;
d) the possible consequences for the interested parties of the planned subsequent treatment;
e) the existence of adequate guarantees, which may include encryption or pseudonymization"

Regarding this, recital 50 of the RGPD provides the following:

"The processing of personal data with purposes different from those for which they were initially collected must only be allowed when it is compatible with the purposes of their initial collection. In such a case, a separate legal basis is not required, other than the one that allowed the personal data to be obtained. If the treatment 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, the tasks and purposes for which the subsequent treatment should be considered compatible and lawful can be determined and specified in accordance with the Law of the Union or of the Member States. […] In order to determine whether the purpose of further processing is compatible with the purpose of the initial collection of personal data, the person responsible for the treatment, after having fulfilled all the requirements for the authorization of the original treatment, must take into account, among other things, any relationship between these purposes and the purposes of further treatment
foreseen, the context in which the data was collected, in particular the reasonable expectations of the interested party based on their relationship with the person in charge regarding their subsequent use, the nature of the personal data, the consequences for the interested parties of the treatment

ulterior planned and the existence of adequate guarantees both in the original treatment operation and in the planned ulterior treatment operation."

Taking into consideration the circumstances of article 6.4 of the RGPD, in order to determine whether the treatment for another purpose is compatible with the purpose for which the personal data were initially collected (management of a funeral right) by to the management of another different funeral right, it should be borne in mind that in both cases it responds to the need to manage the public service of cemeteries.

With regard to the context in which the personal data were collected and, in particular, the relationship between the interested parties and the municipal society, it is clear that they coincide insofar as the society manages the public service of cemeteries and, in this sense, given that it has not facilitated society different contact details for the management of the various funeral rights that affect him, the holder of the funeral right seems to have the expectation that the society will contact him through the contact information he has provided.

Regarding the nature of the personal data to be processed, telephone and email, they are not special categories of data and do not involve special interference by the affected persons as long as their use is limited to the management of funeral rights.

As for the consequences for the interested parties deriving from the treatment, it does not seem that they have to be negative. On the contrary, the regularization that can be carried out once the contact has been established can allow the limitations imposed due to the provisions of article 41.2 of the cemeteries ordinance to be lifted. That is to say, in any case the consequences for those concerned are not negative.

Consequently, the treatment of the contact data of the holders based on the information contained in the files of the municipal society would be compatible in accordance with article 6.4 of the RGPD. In this case it would not be necessary to go to the contact details available to the bank through which the transfer was made.

For cases in which the company does not have its contact details for the management of other funeral rights, it must be taken into account that, in accordance with article 2.2.b) of Law 39/2015, d From October 1, of the Common Administrative Procedure of Public Administrations (LPAC), the company, in the exercise of the public powers entrusted to it, is subject to the regulations of administrative procedure.

And, in this sense, it is appropriate to take into account the provision of article 41.4 of the LPAC, according to which:

"In the proceedings initiated ex officio, for the sole effects of their initiation, the Public Administrations may collect, by consulting the databases of the National Institute of Statistics, the data on the domicile of the interested party collected in the Municipal Register, sent by the Local Entities in application of the provisions of Law 7/1985, of April 2, regulating the Basics of the Local Regime".

And, also, the provision of article 16.3 of the LBRL (and in similar terms, article 40.3 of the TRLMRC), which provides for the following:

"The data of the Municipal Register will be transferred to other public administrations that request it without prior consent of the affected person only when they are necessary for the exercise of their respective powers, and exclusively for matters in which the residence or the domicile are relevant data. […]"

Taking into consideration the possibility of the municipal society to access the identification data of the holders, the mechanisms provided for in these articles that we have just cited can allow the society to access the data relating to the usual address of the holders, and thus be able to address with the purpose of informing them of the circumstances to which the query refers and, if applicable, ask them for other contact details that are necessary for this purpose.

However, it is true that there may be cases in which this communication is not possible because the holders are not registered in any of the databases of the National Institute of Statistics.

For this reason, and in the event that the ways presented so far do not allow obtaining the necessary data to contact the interested parties, it will be necessary to analyze the issue raised in the consultation, that is, the treatment of the contact information of the holders from the communication by the banking entities, which must pass the compatibility judgment of article 6.4 of the RGPD.

Thus, with regard to the relationship between the purposes for which the personal data have been collected and the purposes of the subsequent processing envisaged, as well as the context of the collection, it should be borne in mind that banking entities, without prejudice to 'other treatments that they may carry out, mainly treat the data of their customers with the purpose of managing the contractual relationship, regarding the products, banking, financial or insurance services contracted.

Although this purpose does not coincide with the treatment that the company wants to carry out municipal, to the extent that the management of the contractual relationship, for the purpose that interests us in this case, includes the provision of payment services, relative to the payment operations of the fees associated with funeral rights, it can be considered that there is a relationship between both purposes to the extent that the data to which the company wishes to access are processed, among others, for the notification of direct debit payments associated with the ownership of funeral rights.

On the other hand, in relation to the nature of the personal data, and the possible consequences for the interested parties of the further processing envisaged, as argued above, the data relating to the telephone and email are not special categories of data and they do not entail a special interference by the affected people as long as their use is limited to the management of funeral rights. Likewise, a priori, as explained, it does not seem that they should be negative. In other words, it does not seem that it should lead to a significant intrusion into the right to data protection of the interested parties, especially to the extent that society wants to treat them in order to lift the limitations imposed on funeral rights.

However, it is true that the people affected do not seem to have the expectation that the contact details they have provided to their bank can be transferred to third parties, even if they are people to whom they have a payment through the services of the banking entity.

For this reason, as a guarantee, or a measure that would act as an adequate safeguard to compensate for the change of purpose (art. 6.4.e), it would be necessary that prior to the communication to the company of the telephone or email data, the banking entity offers, with reasonable notice, to the holders the possibility to oppose this treatment, as indicated, for example, in the Opinion
GT29 3/2013 on the limitation of purpose.

In accordance with this, and to the extent that previously the other ways exposed have been tried without success, this treatment could be considered proportionate and compatible.

Finally, it should be remembered that the company must communicate to the holders of the affected funeral rights the information on the processing of data referred to in article 14.1 of the RGPD, among others, the source from which it was obtained personal data, in the first communication carried out with the interested party (art. 14.3.b) RGPD).

In accordance with the considerations made in these legal foundations in relation to the query raised, the following are made,

Conclusions

The request of the local mercantile company, to the banking entities, for the identification data of the people who have made bank transfers for the payment of funeral rights whose updated ownership is not recorded can be protected in the legal basis of article 6.1.e) of the RGPD.

With regard to the data relating to the telephone number and email address of the person who made the payment, once their identity is known, it is considered compatible to use the contact data that the same entity has for management of other funeral rights, as well as the possibility of contacting the interested person using the data contained in the Municipal Register of Inhabitants or in the INE databases, so that it is the affected person who facilitate

In the last instance, and in a subsidiary way with respect to the ways that have just been set out, the communication by the banking entities of the contact details of the people who have made the payments can be considered compatible if, in advance, guarantees the right of the affected person to oppose it.

Barcelona, March 21, 2022